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Tuesday
April 23, 1991

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Briefings on How To Use the Federal Register
For information on briefings in Chicago, IL, Washington, DC, and New York City see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: April 25, at 9:00 am
WHERE: 219 S. Dearborn Street
Conference Room 1220
Chicago, IL
RESERVATIONS: Federal Information Center
1–800–366–2998

WASHINGTON, DC

WHEN: May 2, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202–523–5240

NEW YORK, NY

WHEN: May 21, at 9:00 am
WHERE: 26 Federal Plaza
Room 305 B and C
New York, NY
RESERVATIONS: Federal Information Center
1–800–347–1997

WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202–523–5240 (voice); 202–523–5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 91–26 of April 6, 1991

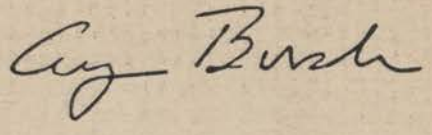
Draw Down from Defense Department Stocks for Disaster Assistance in the Persian Gulf Region

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 506(a)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(2) (the Act), I hereby determine that it is in the national interest of the United States to draw down defense articles from the stocks of the Department of Defense and defense services of the Department of Defense in order to provide international disaster assistance in the Persian Gulf region, including assistance through the International Committee of the Red Cross, the United Nations High Commissioner for Refugees, and Turkey and other friendly governments and organizations that may be approved by the Secretary of State.

Therefore, I hereby authorize furnishing up to $25 million of defense articles from the stocks of the Department of Defense and defense services of the Department of Defense for the purposes and under the authorities of Chapter 9 of Part I of the Act.

You are authorized and directed immediately to report this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, April 6, 1991.

[FR Doc. 91–9540
Filed 4–18–91; 4:22 pm]
Billing code 3195–01–M

Presidential Documents

Presidential Determination No. 91–27 of April 6, 1991

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that $10,000,000 be made available from the U.S. Emergency Refugee and Migration Assistance Fund (Emergency Fund) to meet the unexpected and urgent needs of refugees and other persons displaced by the crisis in the Middle East.

Included in this drawdown is $10,000,000 for the urgent needs of those displaced by the crisis in the Middle East. These funds will be contributed on a multilateral or bilateral basis as appropriate to international organizations, private voluntary organizations, and other governmental and non-governmental agencies engaged in the relief efforts.

You are directed to inform the appropriate committees of the Congress of this Determination and the obligation of funds under this authority, and to publish this memorandum in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, April 6, 1991.

[FR Doc. 91–9541
Filed 4–18–91; 4:22 pm]
Billing code 3195–01–M

Presidential Documents

Memorandum of April 9, 1991

Delegation of Authority Regarding Report to the Congress on the Citizens Democracy Corps

Memorandum for the Secretary of State

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to you the function vested in me by section 599F of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101–513), relating to the submission of a report to the Congress regarding the strategic implementation plan of the Citizens Democracy Corps. The authority delegated by this memorandum may be further redelegated within the Department of State.

You are authorized and directed to publish this memorandum in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, April 9, 1991.

[FR Doc. 91–9542
Filed 4–18–91; 4:22 pm]
Billing code 3195–01–M

Presidential Documents

Proclamation 6273 of April 18, 1991

National Education First Week, 1991

By the President of the United States of America

A Proclamation

Labor and learning precede every inch of human progress. That is why improving our Nation's educational system must be a priority for all Americans. If our citizens are to have the knowledge and skills needed to enjoy full, productive lives, our schools must achieve excellence.

Recognizing our responsibility to nourish the young minds that enter the Nation's classrooms, and knowing that this country cannot have a first-class economy without a world-class education system, the Nation's Governors and I have established six National Education Goals for the year 2000. They include: ensuring that every child starts school ready to learn; raising the graduation rate to at least 90 percent; ensuring that our students demonstrate competency in five core subjects in grades 4, 8, and 12; ranking first in the world in science and math; ensuring that every American adult is literate and possesses the skills, including the technical skills, needed to compete in the global economy; and, finally, making all of our schools safe, disciplined, and drug free. Achieving these goals will require the sustained cooperation of parents, educators, public officials, and the community at large.

While the Federal Government can and will serve as a catalyst for excellence, pointing the way forward and helping schools to meet higher standards, success will require the concerted efforts of parents, educators, and local government leaders. Because competition breeds quality, we can begin by expanding choice and accountability in education. Parents have primary responsibility for the education of their children, and they should have a genuine say in what, where, and how their children learn. Teachers should be able to enjoy greater flexibility in the classroom, and local school systems should act to utilize the talent and experience of persons who want to teach but are prohibited by cumbersome regulations. However, since the best measure of our schools is not how many resources we put into them but what outcomes are achieved, we must hold ourselves accountable for results, verifying what works and what does not.

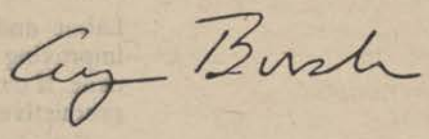
We must also work together to ensure that our children dwell in an environment that is conducive to learning. Such an environment includes schools that are safe, disciplined, and drug free. However, because what goes on in school is only part of a child's educational experience, we must also maintain in our homes and neighborhoods an atmosphere that encourages learning and rewards diligent effort. Parents are their children's first and most influential teachers, and they can help to make ours a more literate Nation by reading to and with their little ones; by taking an active interest in their youngsters' homework and academic progress; and by demonstrating through example the joys of lifelong learning.

Local libraries and museums, business and civic groups, and members of the media can assist parents by offering high-quality educational programs and activities designed to ignite the natural curiosity of children. Indeed, by sparking the imaginations of our students, by ensuring that our schools tend the light of learning with utmost care and expertise, we can build a brighter future for all Americans.

The Congress, by House Joint Resolution 197, has designated the week of April 15 through April 21, 1991, as "National Education First Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of April 15 through April 21, 1991, as National Education First Week. I call upon all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of April, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.



[FR Doc. 91-9572
Filed 4-19-91; 10:27 am]
Billing code 3195-01-M

Editorial note: For the President's remarks on the national education strategy, see the *Weekly Compilation of Presidential Documents* (vol. 27, no. 16).

Rules and Regulations

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Tuesday, April 23, 1991

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 870 and 890

RIN 3206-AE-45

Federal Employees Health Benefits Program, Federal Employees' Group Life Insurance Program; Benefits for Hostages in Iraq, Kuwait, and Lebanon

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to implement section 599C of Pub. L. 101–513 (the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991) enacted November 5, 1990. Section 599C of Public Law 101–513 extended coverage under the Federal Employees' Group Life Insurance (FEGLI) Program and the Federal Employees Health Benefits (FEHB) Program to U.S. hostages in Iraq, Kuwait, and Lebanon while in hostage status and for 12 months thereafter. These regulations set forth the circumstances of their coverage in the two programs.

EFFECTIVE DATE: May 23, 1991.

FOR FURTHER INFORMATION CONTACT: Margaret Sears (202) 606–0780, extension 207.

SUPPLEMENTARY INFORMATION: On December 7, 1990, OPM issued interim regulations in the **Federal Register** (55 FR 50535) that amended parts 870 and 890 to provide for the coverage of certain hostages in Iraq, Kuwait, and Lebanon under the FEGLI and FEHB Programs during the period of hostage status and for 12 months thereafter (if such benefits are not provided by any other group insurer). The interim regulations explained how the provisions of the FEGLI and FEHB laws apply to hostages (and their families) who are covered under these programs by reason of Public Law 101–513.

Under Public Law 101–513 and the interim regulations, the U.S. Department of State has the responsibility for determining the eligibility of individuals for FEGLI and/or FEHB coverage. The State Department also acts as personnel and payroll office and sets the period of time that will serve as a pay period for the hostages.

OPM received no comments concerning the interim regulations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect United States hostages in Iraq, Kuwait, and Lebanon.

List of Subjects

5 CFR Part 870

Administrative practice and procedure, Life insurance.

5 CFR Part 890

Administrative practice and procedure, Health insurance.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM is adopting its interim regulations under 5 CFR parts 870 and 890 published on December 7, 1990 (55 FR 50535) as final rules without change.

[FR Doc. 91–9495 Filed 4–22–91; 8:45 am]
BILLING CODE 6325–01–M

5 CFR Part 890

Federal Employees Health Benefits Program: Disputed Claims Procedures

AGENCY: Office of Personnel Management (OPM).

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations that clarify the conditions under which OPM may render a decision concerning a disputed health benefits claim under the Federal Employees Health Benefits (FEHB) Program. These regulations clarify the circumstances under which OPM may render a decision concerning a claimant who asks OPM to review a health benefits plan's denial of a claim if the plan has either (1) affirmed its denial when the claimant requested reconsideration or (2) failed to respond to the claimant's request for reconsideration as provided by OPM's regulations. The interim regulations clarify that OPM may render a decision without requesting information beyond that supplied with the claimant's request for reconsideration or without information from the health plan when the health plan fails to supply information within the regulatory timeframe, thus delaying the decision and potentially creating severe financial hardship for claimants.

DATES: Interim regulations are effective May 23, 1991. Comments must be received on or before June 24, 1991.

ADDRESSES: Written comments may be sent to Andrea Minniear Farran, Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Margaret Sears, (202) 606–0780, extension 207.

SUPPLEMENTARY INFORMATION: Under current regulations, an enrollee who disagrees with an FEHB plan's decision to deny a claim for health care services (or to refuse to provide certain health care services) must first write to the plan and ask it to reconsider its decision not to pay the claim or not to provide the service. If the plan affirms its initial denial, it must give specific and detailed reasons for the denial and explain to the enrollee his or her right to request that OPM review the plan's decision.

When OPM receives the claimant's request, current regulations provide 3 specific options for processing the request. OPM may (1) request additional information from the claimant, (2) request an advisory opinion from an independent physician, or (3) request any other information necessary for its review (for example, from the plan). The

current regulations require OPM to issue its decision within 30 days after receiving the necessary evidence, but do not clearly address whether OPM can render a decision without requesting additional information.

The interim regulations clarify that OPM may render a decision without requesting any additional information. The enrollee often provides sufficient information with his or her request for review (such as the documentation about the health care service or the plan's explanation of why it affirmed its denial of the claim) for OPM to decide about whether the health care service is covered under the contract. There is no justification for delaying the response to the claimant unnecessarily.

Also, current regulations require a plan to respond to OPM's request for additional information within 30 days (or other timeframe specified by OPM). This request for additional information gives the plan the opportunity to refute the enrollee's assertion that the claim should be paid (or the service provided). However, plans do not always respond to OPM's requests for additional information. Current regulations do not give OPM clear authority to render a decision in the absence of the plan's response, which could result in an unnecessary delay in responding to the claimant.

The interim regulations clarify that OPM may render a decision based on the information supplied by the enrollee when the plan fails to provide a timely response to OPM's request for additional information. It is not reasonable to allow the review process to become stalled, thereby causing undue delay in our response to the claimant, because of a plan's failure to comply with the regulatory requirement of a timely response.

These clarifications will facilitate a timely response to individuals who request OPM's reconsideration of a disputed claim. By the time OPM receives a request for reconsideration, a considerable amount of time has already passed since the individual first filed the claim—time for the plan's initial denial, for the claimant's request to the plan to review its denial, and for the plan to give the specific and detailed explanation required by current regulation. (The amount of time the plan can take to provide this explanation varies, depending on whether they need to get more information from the claimant or the provider.) If the plan complied with the regulation requiring a specific and detailed explanation and the claimant forwards the plan's explanation to OPM with the request for review, OPM should have ample information with which to make its determination. If it is clear that the service for which the claim was filed was covered under OPM's contract with the plan, further delay by the plan in paying the claim is unwarranted. On the other hand, if the service is clearly not covered under the contract, the claimant needs to know that as quickly as possible. If it is not clear whether the service is covered, OPM may give the carrier a 30-day opportunity to provide information about its denial of the claim.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. These interim regulations merely amend OPM's administrative procedures so as to clarify OPM's authority in the reconsideration and review process.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect administrative procedures used by OPM and the FEHB plans.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Claims, Government employees, Health insurance.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending 5 CFR part 890 as follows:

1. The authority citation for part 890 is revised to read as follows:

Authority: 5 U.S.C. 8902(j) and 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under Public Law 101–513.

2. In § 890.105, paragraphs (d)(2) and (d)(4) are revised and paragraph (d)(5) is added to read as set forth below.

§ 890.105 Filing claims for payment or service.

* * * * *

(d) * * *

(2) In reviewing a claim denied by a plan, OPM may (i) request that the enrollee submit additional information; (ii) obtain an advisory opinion from an independent physician; (iii) obtain any other information as may in its judgment be required to make a determination; or (iv) make its decision based solely on the information the enrollee provided initially with his or her request for review.

* * * * *

(4) Within 30 days after receipt of the necessary evidence, OPM will give a written notice of its decision to the enrollee and the plan. If OPM does not receive requested evidence within 15 days after the date specified in paragraph (d)(3) of this section, OPM may make its decision based solely on information available to it at that time and give a written notice of its decision to the enrollee and to the plan.

(5) If OPM does not request additional evidence, OPM will give a written notice of its decision to the enrollee and to the plan within 30 days after receipt of the enrollee's request for review.

[FR Doc. 91–9502 Filed 4–22–91; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 318 and 354

[Docket 91–054]

RIN 0579–AA43

User Fees—Hawaii and Puerto Rico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending 7 CFR parts 318 and 354 to establish user fees for agricultural quarantine and inspection services we provide in connection with the departure of passengers from Puerto Rico and Hawaii on certain domestic airline flights.

The effect of these regulations is to require certain persons to pay fees for certain agricultural quarantine and inspection services.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Charles A. Havens, Chief Operations Officer, Port Operations, PPQ, APHIS, USDA, Federal Building, room 635, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8295.

SUPPLEMENTARY INFORMATION:

Background

Authority

We have general authority to collect user fees under 31 U.S.C. 9701 (the User Fee Statute). This statute states, in part, that:

(a) It is the sense of the Congress that each service or thing of value provided by an agency * * * to a person (except a person on official business of the United States government) is to be self-sustaining to the extent possible.

(b) The head of each agency * * * may prescribe regulations establishing the charge for a service or thing of value provided by the agency * * *. Each charge shall be—(1) fair; and (2) based on (A) the costs to the government; (B) the value of the service or thing to the recipient; (C) public policy or interest served; and other relevant facts.

Each agency must deposit fees collected pursuant to 31 U.S.C. 9701 into the Treasury of the United States.

Under the User Fee Statute, we may charge for the costs of quarantine and inspection services we provide in connection with traffic departing certain domestic quarantine areas for other locations within the United States. These domestic quarantine areas are areas within the United States—Hawaii and Puerto Rico—which are quarantined because of the presence of various plant diseases or pests.

Individuals and means of conveyance departing these areas for any other part of the United States are subject to inspection (see 7 CFR 318.13 and 318.58).

Proposed Rule

On February 27, 1991, we published a document in the **Federal Register** (56 FR 8148–8156, Docket Number 90–247) in which we proposed to amend 7 CFR parts 318 and 354, to establish user fees for agricultural quarantine and inspection services we provide in connection with the departure of passengers from Puerto Rico and Hawaii on certain domestic airline flights. These amendments were proposed under authority of the User Fee Statute. We also proposed in that document to amend 7 CFR parts 320, 330, 352, and 354, to establish user fees for agricultural quarantine and inspection services we provide in connection with the arrival at ports in the customs territory of the United States of commerical vessels, commercial trucks, commercial railroad cars, and passengers on commercial aircraft. This action was proposed to implement portions of the Farm Bill.

We solicited comments concerning our proposal for a 15-day period ending March 14, 1991. We received 61 comments by that date. They were from maritime and shipping interests, both international and domestic, customs brokers, Members of Congress, airlines and travel organizations, state governments, and other interests persons.

After carefully considering all of the comments received, a final rule implementing collection of user fees for international quarantine and inspection services was published in the **Federal Register** on April 12, 1991 (56 FR 14837–14846, Docket No. 91–028). In this final rule, Docket 90–054, we are adopting, with changes discussed below, the proposed amendments related to collection of user fees for agricultural quarantine and inspection services we provide in connection with the departure of passengers from Puerto Rico and Hawaii on certain domestic airline flights. Comments on the proposed rule that are related to the collection of these domestic user fees, or that are applicable to the proposed rule generally, are discussed below.

Requests for Extension of Comment Period

Many comments requested more time to comment on the proposed regulations. One letter stated that providing less than 30 days for comments was a violation of the Administrative Procedure Act (APA).

We realize the comment period for these regulations was ususually short. However, the APA provides only that: "After notice * * * the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation." (See 5 U.S.C. 553(c)). As explained in the proposal, the Animal and Plant Health Inspection Service (APHIS) must institute user fees as soon as possible. Time considerations do not allow for a longer comment period. We believe the comment period provided was reasonable under the circumstances. Moreover, the fact that we received 61 comments on the proposal, many of which were extensive, leads us to believe that the comment period was adequate.

Request for Delay of Effective Date

Many other comments stated that the effective date of the regulations should be delayed. One letter asserted that providing fewer than 30 days between publication of a final rule and its effective date is a violation of the APA. Among the reasons given for requesting the delay of the effective date of the regulations were to allow adequate time to reprogram computers and to inform and train ticket agents in the new requirements.

We do not agree that providing less than 30 days between publication of a final rule and its effective date is a violation of the APA. The APA allows a short period "as otherwise provided by the agency for good cause found and published with the rule." (See 5 U.S.C. 553(d)(3)) Our proposed regulations included an explanation of the time restraints and a finding of good cause.

However, we have determined that the effective date of the regulations should be adjusted to allow affected parties more time to make necessary preparations to implement the rule. Therefore, the APHIS user fees will not be made effective April 1, 1991. Instead, user fee requirements for passengers departing Hawaii and Puerto Rico on certain domestic airline flights will be made effective August 1, 1991. We have amended § 354.4(b)(4) to reflect this change.

Use of Fees—Deficit Reduction v. Augmenting Services

Several comments favored the concept of user fees, but objected to using the fees for deficit reduction. Comments suggested that the fees be used to augument the APHIS budget and improve services.

As regards airline passenger user fees collected under the User Fee Statute, those fees must, according to that statute, be deposited in the general fund of the United States Treasury and are not directly available to fund APHIS's AQI services. We anticipate receiving an appropriation to cover the cost APHIS incurs in providing AQI services in connection with the departure of passengers from Puerto Rico and Hawaii on certain domestic airline flights. However, that is a Congressional prerogative over which we have no control.

Future Review and Revision of User Fees

Several comments addressed the issue of revising user fees after they are adopted. As mentioned in our proposed regulations, we intend to monitor our fees throughout the year and review them on at least an annual basis. We will propose to adjust the fees up or down as the review warrants. We will publish, for public comment, any proposed fee changes in the **Federal Register**.

Increased Cost of Doing Business

Some comments stated that the fees would increase their cost of doing business. We realize that payment of the user fees will increase the up-front cost of doing business. However, as stated in our proposal, having the user, or beneficiary, of the service pay for it directly will allow a reduction in general tax receipts.

Collecting Fees Upon Departure of Airline Passengers

Our proposed regulations included a provision that:

> [If] the APHIS user fee applies to a passenger departing from Hawaii or Puerto Rico and if the passenger's tickets or transportation document do not reflect collection of the APHIS user fee at the time of issuance, then the carrier transporting the passenger from Hawaii or Puerto Rico must collect the APHIS user fee upon departure. (proposed § 354.4(b)(4)(ii))

Numerous comments stated that it is impractical to collect user fees from airline passengers at the time they depart. According to the commenters, passengers with tickets would have to be individually "audited" at the gate, and those whose tickets did not show payment of the APHIS user fee would have to be sent back to the ticket counter for payment of the fee and issuance of another ticket. The comments stated that major delays could occur as a result of this. Comments requested that our airline passenger user fee apply only to tickets issued on or after the effective date of the regulations.

We have carefully considered these comments. In response we have amended the regulations to provide that the APHIS user fee does not need to be collected from passengers traveling after the effective date of the regulations, if their ticket was issued prior to that date. However, the APHIS user fee would have to be collected from other airline passengers traveling after the effective date of the regulations who have not, for whatever reason, paid the fee. We realize that some fees will still need to be collected on departure. However, the number of such fees, and the delays cited in the comments, will be severely reduced. We have amended § 354.4(b)(4)(ii) to reflect these changes.

Exemptions for Certain Airline Employees and Passengers

The proposed regulations exempt on-duty airline crew members from paying the airline passenger APHIS user fee. Many comments requested that we extend this exemption to include other airline employees flying on airline business. Many comments also suggested that certain other passengers be exempt from paying the airline passenger user fee. The comments suggested that senior citizens traveling on open tickets, and any person traveling on non-paying marketing and promotional tickets be exempt from paying the airline passenger user fee.

We have reviewed these comments and have determined that airline employees traveling on official airline business, including "deadheading" crew members, should be exempt from paying the airline passenger APHIS user fee. This conforms to U.S. Customs Service (Customs) regulations. The airline industry indicated that for these passengers, the usual mechanisms for capturing the user fee in the automated fare system and collecting the fee at the point of sale are not present. This occurs because non-revenue documents are used. The airlines have indicated that it would cost more than the amount of the fee to collect it in these cases. If the airlines were to collect these fees from the airline employees, the employee would request that the airlines reimburse them for this as a business expense. Inspecting the airline employees is considered part of the cost of our services to the airlines; therefore, the costs associated with inspecting these airline employees can be recovered under our aircraft inspection user fee, which we intend to propose at a later date. With these changes in the regulations, user fees covering the cost of inspecting airline employees will still be borne by the airlines, through a different fee. Section 354.4(b)(2) of the regulations reflects this change.

We are not amending the regulations to exempt senior citizens traveling on open passes or passengers traveling on marketing or promotional tickets from the airline passenger APHIS user fee. We recognize that fees cannot be collected at the time the ticket is sold since there is no way to know if or how many times the ticket may be used on flights subject to the APHIS user fee. However, these passengers are subject to inspection. If these passengers are traveling on a ticket issued after the effective date of the regulations, the APHIS user fee must be collected from them upon departure.

Overtime for Airlines

Several comments suggested that the regulations specifically state that airlines carrying passengers subject to the airline passenger APHIS user fee are exempt from overtime charges.

We intended to exempt airlines from overtime charges for passenger inspection. Charging overtime for passenger inspections would be excessive, as the cost of providing passenger inspection is already covered by the APHIS user fee for airline passengers. Therefore, we have added a new § 354.4 (b)(8) to the regulations to include this provision.

User Fees for Intransit and Lay-Over Passengers: Multiple User Fees

Some comments stated that the regulations were not clear as to how the user fees would apply to intransit passengers and lay-over passengers, and they also questioned the payment of multiple user fees, that is, more than one user fee for the same trip. Intransit passengers are passengers who arrive at a port of entry, do not proceed through the federal clearance process, and then continue to another destination. Lay-over passengers are passengers who arrive at a port of entry, proceed through the federal clearance process, and then continue to another destination.

Intransit passengers would not pay the international passengers inspection fee for intransit stops since they would not go through the federal clearance process. Intransit passengers would pay the international inspection fee if and when they eventually clear through the federal inspection process at a subsequent port. International layover passengers whose layovers occur in Hawaii or Puerto Rico would pay both an international inspection fee and a domestic inspection fee because two inspections are required.

Marking of Airlines Tickets

Airline tickets are marked to show the various fees and taxes which are included in the price of the ticket. Comments indicated some confusion concerning these requirements. Airline tickets include a box where combined federal user fees are recorded. The amount of the APHIS airline passenger fee will be added to all other federal user fees which are also collected on the ticket. No separate mark needs to be applied to the ticket for the APHIS user fee. We are also deleting the requirement that the markings on the ticket must be in accordance with procedures set forth in the ARC Industry Agents Handbook, the SATO Ticketing Handbook, or compatible procedures set forth in the operations manual of the person who collects the APHIS user fee. There are no such procedures at the current time in those handbooks or manuals concerning APHIS user fees. It will be up to the industry to develop a workable system for this purpose by adding markings for collection of the APHIS user fee into markings for other fees collected, such as the Customs and Immigration and Naturalization Service fees, or to develop some other system.

Bundling User Fees Into Airline Fares

One comment suggested that the APHIS user fee for airline passengers be "bundled" into the fare, without any

indication to the passenger that it was included. We are making no changes based on this comment. Other federal user fees which apply to airline passengers are indicated on the ticket. We believe our user fee system should be consistent with those of other federal agencies.

Reporting Procedures

Several comments addressed the issue of reporting procedures for airlines selling space to tour operators and wholesalers. Some stated that the procedures should be simplified; others stated that the requirement should be eliminated for any airline that collects APHIS user fees through the tickets sold.

We have determined, based on these comments, that § 354.4(b)(6) should be amended to state that the reporting requirements apply only to instances in which airlines sell a block of seats and individual airline tickets are not issued for those seats. Under this amendment, airlines would only need to report ticketed sales when collection of the APHIS user fee was not marked on the ticket and remitted to APHIS.

User Fee Statute Authority

Many comments questioned our authority to charge a user fee for inspection relating to passengers departing Hawaii and Puerto Rico on certain domestic airline flights. In our proposal, we cited the User Fee Statute as authority for these fees.

Passengers departing by air from Hawaii and Puerto Rico to the continental United States are required to offer their baggage and other personal effects for inspection at agricultural inspection stations. When an inspector has inspected and passed such baggage and personal effects, he or she applies a USDA stamp, inspection sticker, or other identification to such baggage or personal effects to indicate that they have been inspected and passed. No person may accept or load any check-in aircraft baggage destined for movement from Hawaii or Puerto Rico to the continental United States unless a certificate is attached to the baggage, or the baggage bears a USDA stamp, inspection sticker, or other indication applied by an inspector representing that the baggage has been inspected and passed. (7 CFR 318.13–10 and 318.58–10)

The APHIS user fee relating to aircraft passengers traveling from Hawaii and Puerto Rico to the continental United States is a reasonable charge made to each identifiable recipient for a measurable unit or amount of Government service from which the recipient derives a special benefit. Courts have held that such fees may be assessed under the User Fee Statute even when the service redounds in part to the benefit of the public as a whole. So long as the service provides a special benefit, above and beyond that which accrues to the public at large, to a readily-identifiable individual, the fee is permissible. In this instance, aircraft passengers cannot have their bags checked for a flight to the continental United States or board such a flight unless they have been inspected and passed by an APHIS inspector. This inspection is a special benefit to such aircraft passengers.

The term "special benefit" has been broadly defined in court cases to include even assisting regulated entities in complying with regulatory statutes. That is what APHIS's inspections in Hawaii and Puerto Rico are designed to do, help aircraft passengers traveling from Hawaii and Puerto Rico to the continental United States by aircraft to comply with the regulations designed to prevent the interstate movement of articles that could disseminate plant pests and diseases that do not exist in the continental United States.

Proliferating User Fees

Several comments complained that federal user fees are proliferating, without any clear overall picture of how they will be used or allocated. APHIS has no control over other user fees which may be authorized or imposed by Congress. However, we have coordinated, as much as possible, our user fee collection system with the existing user fee collection system of Customs. By doing this we are attempting to minimize the impact of the user fees.

Some comments expressed concern that if APHIS adopts the user fees it has already proposed, it will adopt additional user fees in the future. As we stated in our proposal, we do intend to propose user fees covering other AQI services we provide. This is in compliance with authority granted us in the Farm Bill.

Discrimination Against Hawaii and Puerto Rico

A couple of comments stated that the user fees discriminate against the State of Hawaii and against travelers from that State. A similar comment declared that the user fees discriminate against the Commonwealth of Puerto Rico and travelers from that Commonwealth.

Hawaii and Puerto Rico are the only places within the Customs territory of the United States which are currently subject to APHIS quarantines which include inspection requirements. Other parts of the United States could be, and will be, if necessary, placed under similar quarantines. Similar inspections could be, and will be if necessary, required from quarantined areas. APHIS does not impose quarantines and require inspections to discriminate against individual states or territories. Quarantines and inspection requirements are imposed to prevent the spread of diseases and pests.

Quarantines and inspections benefit both the quarantined areas and unquarantined areas. By preventing the spread of pests and diseases to unquarantined areas, quarantines and inspections help ensure that all consumers, regardless of where they live, have access to an abundant and reasonably priced supply of agricultural products. In addition, allowing persons, goods, and means of conveyance to leave a quarantined area subject to inspection, allows trade, tourism, and other industries to flourish within the quarantined area. The alternative would be to prohibit export from the quarantined areas of articles which pose an unacceptable risk of spreading diseases and pests.

Calculation of Fees

Some comments stated that airline passenger fees were too high. Other comments questioned whether we should include certain cost factors, for example, agency-level overhead charges, in calculating fees. Some comments also stated that we would recover more money from our proposed fees than it costs to provide AQI services. Other comments questioned our method of rounding the "raw fee" up to the nearest dollar.

We did not make any changes in the regulations based on these comments. The initial APHIS user fees are based, in part, on estimates of the traffic volume in various service categories: International passengers, domestic passengers, aircraft arrival, air cargo inspection, vessel inspection, maritime cargo clearance, truck arrival, rail car arrival, and phytosanitary certificates.[1] Costs were assigned directly to a category when the cost directly related to providing the service. Where a cost benefitted all categories of service, it was pro-rated among the categories based on historic direct labor staff hours. The total cost in each service category was divided by activity volume

[1] APHIS user fees were not proposed for all of the listed service categories. However, to determine the costs applicable to the categories for which APHIS did propose a user fee, it was necessary to gather data on other service categories.

to arrive at a final fee. We estimated activity volume for 1992 by obtaining data for prior years from the Department of Transportation, Customs, and our own records. We adjusted these figures for anticipated changes in volume, based on past changes and on current world conditions which could affect volume, such as the Persian Gulf situation. This calculation provided the "raw fee."

We rounded the "raw fee" up to the nearest dollar. If we were to round down, even if it were only pennies, in certain service categories such as airline passengers, the fee would not fully recover our costs. We cannot recover that shortfall by charging a higher fee for another service category. We also chose to round up to the dollar so that each fee would be an even dollar figure. This makes collection and reporting easier. It also makes our fees consistent with those charged by other Federal agencies. Customs, the Immigration and Naturalization Service, and the United States Trade and Tourism Administration also collect user fees in whole dollar amounts.

Each service category was considered separately. Each category must, through user fee receipts, return enough money to APHIS to cover the cost of providing AQI services to that particular category. Therefore, when computing fees for one category, we cannot take into account the amount of the fees calculated for other service categories.

We intend to review, and revise as necessary, our user fees. If we determine that the fees are recovering more, or less, revenue than is necessary to cover all the cost of providing certain AQI services, we will change the fees. All fee changes will be published in the **Federal Register** for public comment.

Compiling Amount of User Fee and Service or Risk

There were several comments questioning the amount of individual APHIS user fees. Comments suggested that if a means of conveyance poses a greater disease or pest risk, it should pay a higher fee. Other comments suggested the fee should be tied to the length of time an inspection takes or the amount of service provided.

We have carefully considered these comments and determined that no changes are necessary at this time. We realize that the degree of pest or disease risk posed by individual persons or means of conveyance varies. However, the number of variables which determine the actual risk, and, therefore, determine the amount of service or length of time required to provide service, is virtually infinite. A system which attempted to account for the variables would be unwieldy and expensive to administer and would require that the additional expenses would have to be included in the fee calculation.

Miscellaneous Comments

Other comments stated that the APHIS user fee is a tax, not a fee. We do not agree with this comment. A tax is money paid to support general government operations. A fee is money paid for a specific service. The APHIS user fees are designed to recover and fund the cost of providing specific services. As such, the APHIS user fee is a user fee, not a tax.

One comment suggested that as part of the regulations APHIS should establish an Advisory Committee to monitor operations and use of the APHIS user fees. We are taking no action based on this comment at this time. The establishment of an Advisory Committee is outside the scope of this rulemaking proceeding.

One comment was received which purported to address the Economic Impact Analysis conducted in conjunction with the proposed regulations. However, the comments actually addressed how fees were calculated and other issues within the proposed regulations. We have attempted to respond to this comment in our discussions above.

The proposed regulations indicated that refunds of APHIS user fees collected in conjunction with unused tickets should be netted against the next subsequent remittance. This has been changed from advisory to mandatory to make it uniform and enforceable.

The proposed regulations indicated that domestic user fees should be collected from airline passengers traveling from Hawaii or Puerto Rico to or through any other State, Commonwealth, or Territory of the United States other than Guam. This has been changed to exclude airline passengers traveling from Puerto Rico to the United States Virgin Islands because no inspections are performed for such movements.

We have made minor non-substantive changes for clarity.

Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, it has been determined that this rule is a "major rule."

The regulatory impact analysis indicates that the implementation of user fees for agricultural quarantine and inspection services for domestic passengers would result in total savings to taxpayers of about $1.4 million in fiscal year 1991 and $16 million in subsequent years. A total discounted savings of $53 million is expected over five years.

The deadweight loss (the loss in consumer surplus associated with decrease in air travel resulting from the fees) are estimated to be $2,734 in 1991, $31,279 in the following years ($101,885 discounted over five years). Administrative costs to the Department for implementing these user fees are estimated to be about $24,623 in 1991, $145,294 in subsequent years ($485,185 over five years).

Executive Order 12606

We have analyzed these regulations in accordance with Executive Order 12606, and have determined that this rule has no potential impact on the family well-being. We have determined that this rule: Does not affect the stability of the family, and particularly, the marital commitment; does not affect the authority and rights of parents in the education, nurture, and supervision of their children; does not help or hinder the family to perform its functions; does not substitute governmental activity for family functions; and does not affect family earnings. We have also determined that the benefits of this action justify any impact they may have on the family budget, and that this activity cannot be carried out by a lower level of government or by the family itself. This rule sends no message, intended or otherwise, to the public concerning the status of the family or to young people concerning the relationship between their behavior, their personal responsibility, and the norms of our society.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection provisions that are included in this final rule have been submitted for approval to the Office of Management and Budget.

Executive Order 12372

This program activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects

7 CFR Part 318

Agricultural commodities, Guam, Plant diseases, Plant pests, Plants

(Agriculture), Puerto Rico, Quarantine, Transportation, Virgin Islands, Hawaii.

7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (agriculture), Quarantine, Transportation.

Accordingly, we are amending 7 CFR parts 318 and 354 as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. The authority citation for part 318 is revised to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, 167; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

§ 318.13–15 [Amended]

2. In part 318, Subpart—Hawaiian Fruits and Vegetables, at the end of the first sentence of § 318.13–15 the period is removed and ", unless a user fee is payable under § 354.4 of this chapter." added in its place.

§ 318.58–15 [Amended]

3. In part 318, Subpart—Fruits and Vegetables from Puerto Rico or Virgin Islands, at the end of the first sentence of § 318.58–15 the period is removed and ", unless a user fee is payable under §§ 354.3 or 354.4 of this chapter." added in its place.

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

4. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 21 U.S.C. 136 and 136a; 31 U.S.C. 9701, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

5. Part 354 is amended by adding a new § 354.4 to read as follows:

§ 354.4 User fees for certain domestic services.

(a) *Definitions.* Whenever in this section the following terms are used, unless the context otherwise requires, they shall be construed, respectively, to mean:

APHIS. The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Calendar year. The period from January 1 to December 31, inclusive, of any particular year.

Departure. Departure from Hawaii or Puerto Rico for any other location within the United States.

Person. An individual, corporation, partnership, trust, association, or any other public or private entity, or any officer, employee, or agent thereof.

(b) *Fee for inspection of commercial aircraft passengers from Hawaii and Puerto Rico.* (1) Except as set forth in paragraph (b)(2) of this section, each passenger aboard a commercial aircraft who is subject to inspection under § 318.13–8 or § 318.58–8 of this chapter must pay an APHIS user fee. The APHIS user fee is $2 for each departure for passengers departing Hawaii or Puerto Rico.

(2) The following categories of passengers are exempt from paying an APHIS user fee:

(i) Crew members who are on duty on a commercial aircraft.

(ii) Airline employees, including "deadheading" crew members, who are traveling on official airline business;

(iii) Diplomats, except for United States diplomats, who can show that their names appear on the accreditation listing maintained by the United States Department of State. In lieu of the accreditation listing an individual diplomat may present appropriate proof of diplomatic status to include possession of a diplomatic passport or visa, or diplomatic identification card issued by a foreign government.

(iv) Passengers departing on any commercial aircraft used exclusively in the governmental service of the United States or a foreign government, including any agency or political subdivision of the United States or a foreign government, so long as the aircraft is not carrying persons or merchandise for commercial purposes.

(v) Passengers transiting Hawaii or Puerto Rico and subject to inspection under part 330 of this chapter.

(3) APHIS user fees shall be collected when tickets or travel documents are issued indicating travel from Hawaii or Puerto Rico, to or through any other State, Commonwealth or Territory of the United States other than Guam and the United States Virgin Islands.

(4) Collection of fees. Any person who issues tickets or travel documents on or after August 1, 1991, is responsible for collecting the APHIS user fee from all passengers to whom the APHIS user fee applies.

(i) Tickets or travel documents must be marked by the person who collects the APHIS user fee to indicate that the required APHIS user fee has been collected from the passenger.

(ii) If the APHIS user fee applies to a passenger departing from Hawaii or Puerto Rico, and if the passenger's tickets or travel documents were issued on or after August 1, 1991, but do not reflect collection of the APHIS user fee at the time of issuance, then the carrier transporting the passenger must collect the fee upon departure.

(5) *Remittance and statement procedures.* (i) The carrier whose ticket stock or travel document reflects collection of the APHIS user fee must remit the fee to the United States Department of Agriculture, National Finance Center, COD Field Office, P.O. Box 70791, Chicago, IL 60673. The travel agent, United States-based tour wholesaler, or other entity, which issues its own non-carrier related ticket or travel document to a passenger who is subject to an APHIS user fee under this part, must remit the fee to the United States Department of Agriculture, National Finance Center, COD Field Office, P.O. Box 70791, Chicago, IL 60673, unless by contract the carrier will remit the fee.

(ii) APHIS user fees must be remitted to the United States Department of Agriculture, National Finance Center, COD Field Office, P.O. Box 70791, Chicago, IL 60673, for receipt no later than 31 days after the close of the calendar quarter in which the APHIS user fees were collected. Late payments will be subject to interest, penalty, and handling charges as provided in the Debt Collection Act of 1982 (31 U.S.C. 3717). Refunds by a remitter of APHIS user fees collected in conjunction with unused tickets or travel documents shall be netted against the next subsequent remittance.

(iii) At the same time a remittance is transmitted, the remitter must mail a written statement to the United States Department of Agriculture, National Finance Center, Billings and Collection Branch, P.O. Box 60950, New Orleans, LA 70160. The statement must include the following information:

(A) Name and address of the person remitting payment;

(B) Taxpayer identification number of the person remitting payment;

(C) Calendar quarter covered by the payment; and

(D) Amount collected and remitted.

(iv) Remittances must be made by check or money order, payable in United States dollars, through a United States bank, to "The Animal and Plant Health Inspection Service."

(6) Carriers contracting with United States-based tour wholesalers are responsible for notifying the Department of Agriculture, National Finance Center, Billings and Collections Branch, P.O. Box 60950, New Orleans, LA 70160, of all flights contracted, the number of spaces contracted for, and the name, address, and taxpayer identification number of the United States-based tour wholesaler, within 31 days after the close of the calendar quarter in which such a flight occurred; except that, carriers are not

required to make notification if tickets or travel documents, marked to show collection of the APHIS user fee, are issued for the individual contracted spaces.

(7) *Compliance.* Each carrier, travel agent, United States-based tour wholesaler, or other entity, subject to this section, must allow APHIS personnel to verify the accuracy of APHIS user fees collected and remitted and to otherwise determine compliance with 31 U.S.C. 9701 and this paragraph. Each carrier, travel agent, United States-based tour wholesaler, or other entity must advise the United States Department of Agriculture, National Finance Center, Billings and Collections Branch, P.O. Box 60950, New Orleans, LA 70160, of the name, address, and telephone number of a responsible officer who is authorized to verify APHIS user fee calculations, collections, and remittances. The United States Department of Agriculture, National Finance Center, Billings and Collections Branch, P.O. Box 60950, New Orleans, LA 70160, must be promptly notified of any changes in the identifying information submitted.

(8) *Limitation on charges.* Airlines will not be charged reimbursable overtime for passenger inspection services required for any aircraft on which a passenger arrived who has paid the airline passenger APHIS user fee for that flight.

Done in Washington, DC, this 17th day of April 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-9456 Filed 4-22-91; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 242

[INS #1288-91]

Delegations of Authority To Issue Orders to Show Cause and Warrants of Arrest in Proceedings to Determine Deportability and To Grant and Revoke Voluntary Departure Prior To Commencement of Proceedings

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends 8 CFR part 242, by adding the positions of Director, Organized Crime Drug Enforcement Task Force (OCDETF), and Assistant Director, Organized Crime Drug Enforcement Task Force (OCDETF), (New York, NY; Houston, TX; Los Angeles, CA; and Miami, FL) to the list of officials authorized to issue Orders to Show Cause, warrants of arrest, and the granting and revocation of voluntary departure prior to commencement of hearing. This is an internal change only and is necessitated by the need to implement the Organized Crime Drug Enforcement Task Force Pilot Project set forth in section 6151 of the Anti-Drug Abuse Act of 1988, Public Law 100-690. This change will permit the expeditious processing for expulsion of aliens found unlawfully in the United States as a result of OCDETF operations.

EFFECTIVE DATE: April 23, 1991.

FOR FURTHER INFORMATION CONTACT: Ira L. Frank, Senior Special Agent, Investigations Division, Immigration and Naturalization Service, 425 I Street, NW., room 2207, Washington, DC 20536, Telephone (202) 514-0747.

SUPPLEMENTARY INFORMATION: This rule adds the position of Director, Organized Crime Drug Enforcement Task Force (OCDETF), and Assistant Director, Organized Crime Drug Enforcement Task Force (OCDETF), (New York, NY; Houston, TX; Los Angeles, CA; and Miami, FL) to the list of Immigration and Naturalization Service officials authorized to issue Orders to Show Cause, thereby initiating deportation proceedings pursuant to 8 CFR 242.1(a). It also amends 8 CFR 242.2(c)(1) to permit the same officials to sign warrants of arrest. Finally, it amends 8 CFR 242.5(a) (1) and (c) to permit the Director, OCDETF, and Assistant Director, OCDETF, (New York, NY; Houston, TX; Los Angeles, CA; and Miami, FL) to authorize voluntary departure prior to commencement of hearing and to revoke same.

Prior to the enactment of the Anti-Drug Abuse Act of 1988, the Immigration and Naturalization Service participated in the Attorney General's Organized Crime Drug Enforcement Task Force (OCDETF) to a limited extent. However, the Anti-Drug Abuse Act of 1988 mandates that the Immigration and Naturalization Service now make a larger commitment to the national drug law enforcement effort by placing INS agents in areas that were underserved previously or where a heavy influx of alien criminals involved in organized narcotics trafficking poses an imminent danger to the welfare of large metropolitan areas. The authorities being granted to the Director and Assistant Director, Organized Crime Drug Enforcement Task Force, are necessary to carry out their duties under the provisions of the Organized Crime Drug Enforcement Task Force Pilot Project set forth in section 6151 of the Anti-Drug Abuse Act of 1988, Public Law 100-690. The pilot project will be established in New York, New York; Houston, Texas; Los Angeles, California; and Miami, Florida.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date are inpracticable and unnecessary as the changes have been mandated by Public Law 100-690 and relate to agency management.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 242

Administrative practice and procedure, Aliens, Deportation.

Accordingly, part 242 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

1. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1254, 1362; 8 CFR part 2.

2. Section 242.1, is amended by removing the "or" at the end of paragraph (a)(16) and by replacing the "." with a ";" at the end of paragraph (a)(17) and by adding paragraphs (a)(18) and (a)(19) to read as follows:

§ 242.1 Order to show cause and notice of hearing.

(a) * * *

(18) Director, Organized Crime Drug Enforcement Task Force (OCDETF);

(19) Assistant Director, Organized Crime Drug Enforcement Task Force (OCDETF), (New York, NY; Houston, TX; Los Angeles, CA; and Miami, FL).

* * * * *

3. Section 242.2, is amended by removing the "or" at the end of paragraph (c)(1)(xv) and by replacing the "." with a ";" at the end of the paragraph (c)(1)(xvi) and by adding paragraphs (c)(1)(xvii) and (c)(1)(xviii) to read as follows:

§ 242.2 Apprehension, custody, and detention.

* * * * *

(c) * * *

(1) * * *

(xvii) Director, Organized Crime Drug Enforcement Task Force (OCDETF);

(xviii) Assistant Director, Organized Crime Drug Enforcement Task Force (OCDETF), (New York, NY; Houston, TX; Los Angeles, CA; and Miami, FL).

* * * * *

§ 242.5 [Amended]

4. Section 242.5(a)(1) is amended by removing the "and" immediately before the term "assistant district directors," by removing the "." at the end of the paragraph and by adding the term ", Director, Organized Crime Drug Enforcement Task Force, or Assistant Director, Organized Crime Drug Enforcement Task Force, (New York, NY; Houston, TX; Los Angeles, CA; and Miami, FL)."

§ 242.5 [Amended]

5. Section 242.5(c) is amended by removing the "or" immediately before the term "chief patrol agent," by removing the "." at the end of the paragraph and by adding the phrase ", Director, Organized Crime Drug Enforcement Task Force, or Assistant Director, Organized Crime Drug Enforcement Task Force, (New York, NY; Houston, TX; Los Angeles, CA; and Miami, FL)."

Dated: February 27, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-9396 Filed 4-22-91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 51

[Docket No. 88-004]

Animals Destroyed Because of Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are increasing the amount of Federal indemnity for brucellosis exposed bison and certain brucellosis exposed cattle destroyed during herd depopulation. Cattle affected by this action are nonregistered cattle other than dairy cattle. The increased indemnity is to give herd owners sufficient financial incentive to depopulate their herds, thereby assisting in the accelerated eradication of brucellosis in the United States.

EFFECTIVE DATE: April 23, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. John D. Kopec, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6188.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 51 (referred to below as the regulations), provide for payment of Federal indemnity to owners of animals destroyed because of brucellosis. Under the regulations, maximum "per head" indemnity rates are set, with the provision that the Administrator shall authorize the maximum amount in each case, unless: (1) Sufficient funds are not available, (2) the State or area in which the animal is located under Federal quarantine, (3) the State does not request payment of Federal indemnity, or (4) the State requests a rate lower than the maximum.

On September 28, 1987, we published in the **Federal Register** (52 FR 36272-36274, Docket Number 85-122), a proposal to increase by $100 the amount of Federal indemnity for brucellosis exposed bison and certain brucellosis exposed cattle destroyed during herd depopulation. Cattle affected by this action are nonregistered cattle other than dairy cattle. The intent of the proposal was to provide owners with a financial incentive for depopulating their herds in a timely manner and, therefore, reduce the risk of the disease spreading. We also proposed that Federal indemnity payments be made at the rates in effect at the time the Administrator approved the herd for depopulation. In addition, we proposed to allow Veterinarians in Charge to grant owners up to 60 days to present registration papers for registered cattle and to allow the Deputy Administrator to grant an extension beyond 60 days.

On November 25, 1987, we published in the **Federal Register** (52 FR 45200, Docket Number 87-152) a document reopening and extending the comment period for our proposed rule. Our notice to reopen and extend the comment period invited the submission of written comments, which were required to be postmarked or received on or before December 28, 1987. We received 43 comments. Thirty-eight supported the proposed rule as published; 4 supported the increases in indemnity but suggested modifications to the proposal; and 1 objected to the proposal. All objections and suggestions are discussed below.

Except as explained below, we have adopted the provisions of the proposed rule as a final rule for the reasons given in the proposal and in this document.

Comments

One commenter objected to the increases in indemnity, stating that the increase was "exorbitant" and in excess of the approximate difference (which he estimated at $100) between the average breeding value of a nonregistered cow other than dairy and the slaughter value of the animal. He asserted that this amount of indemnity would give owners very little incentive to try to keep brucellosis out of their herds and might, in fact, encourage owners to let brucellosis develop in their herds. The commenter also stated that he "thought the Federal government was planning to be out of the brucellosis eradication program by 1990" and, if so, "should not be increasing indemnities."

The statement that the Animal and Plant Health Inspection Service was planning on abandoning the eradication program is incorrect. The current rate of brucellosis incidence in the United States, as measured by the percentage of herds quarantined, is 0.064 percent. With long-established animal diseases such as brucellosis, the last vestiges of infection are the most difficult and costly to eradicate. However, cost/benefit analyses demonstrate that full eradication is preferable to an approach that only "controls" the disease at a low incidence level, and we are committed to using the resources at our disposal to work toward such eradication.

Our plan to increase indemnities applies to brucellosis exposed bison and certain brucellosis exposed cattle destroyed during herd depopulation. These increases are intended to encourage owners to destroy potential sources of infection to other herds as early as possible. The indemnity rates in effect before this final rule did not provide sufficient incentive for depopulation. In fact, the rates for brucellosis exposed bison and cattle destroyed during herd depopulation were equivalent to the rates in effect for reactors. Based on our experience, and on the many positive comments we received concerning the proposed rule, we believe that, for depopulation to be a successful tool in eradicating brucellosis, increases in indemnity are necessary. We do not, however, believe these rates to be so high as to make owners indifferent to keeping brucellosis out of their herds, or to encourage

owners to let brucellosis develop in their herds.

Figures from the January 1991 issue of the Drover's Journal, reflecting prices for mid-December 1990, indicate an average difference of $172.53 between the price of a 1,000 pound nonregistered cow, other than a dairy animal, sold to slaughter and a like 1,000 pound cow sold for breeding. The average weight of a slaughter cow is approximately 1,000 pounds. The price for bison largely corresponds to that for nonregistered cattle other than dairy cattle. The average difference of $172.53 is $22.53 more than the indemnity of $150 that this final rule provides for bison and nonregistered cattle other than dairy cattle. (The higher indemnity proposed for bison and nonregistered cattle other than dairy cattle in Alaska, Hawaii, Puerto Rico, and the Virgin Islands is in line with higher market prices in those areas.) With Federal indemnity for exposed animals set at $150 per head, a 1,000 pound cow sold to slaughter would on average bring less than its breeding value.

Beyond the average difference between the price of animals sold for breeding and those sold to slaughter, there are other reasons why it would not be economically beneficial for owners to encourage brucellosis in their herds. Herds affected by brucellosis suffer reduced calf crops, due to abortions and weakened calves. Herds in which brucellosis is discovered are also subject to quarantine, and owners are prohibited from selling breeding animals from those herds until the brucellosis is eliminated. Further, the owner must bear additional costs for the labor necessary to assemble the affected herd for testing. Additionally, affected herds pose the risk of spreading brucellosis to humans with whom they come in contact. Therefore, although the increase in indemnity will ease economic losses for owners of exposed animals destroyed during herd depopulation, we are confident it will not encourage owners to allow brucellosis to develop in their herds.

One commenter maintained that we should increase the indemnity for reactors so that epidemiologists are not tempted to misrepresent reactor cattle or bison as exposed cattle or bison. Noting that the test chart an epidemiologist completes before herd depopulation "asks for titer responses, not classification," the commenter suggested that an epidemiologist could submit the chart "without classifying the animals." We have made no changes based on this comment.

Epidemiologists are given latitude in determining the brucellosis classification of animals. However, an animal positive to an initial test for brucellosis would be considered either a reactor or a suspect. If a suspect, additional tests would be required to determine the animal's brucellosis classification. Omission of the word "reactor" on a test chart, either purposefully or inadvertently, would not affect the animal's brucellosis classification.

Also, as stated earlier, the increase in indemnity for brucellosis exposed cattle and bison is intended to encourage owners to destroy potential sources of infection as early as possible. When reactors bring the same indemnity as exposed cattle and bison, many herd owners take a "wait-and-see" approach, keeping exposed animals in a herd and removing an animal only when it becomes a reactor. Depopulation then becomes a last resort, used when all attempts to clean up the herd have failed. Offering more indemnity for exposed animals destroyed during herd depopulation than for reactors is necessary to encourage early depopulation.

One commenter expressed concerned about our requirement in proposed § 51.3(a)(2)(i) that "[o]wners must furnish proof of destruction to the Veterinarian in Charge prior to payment of Federal indemnity." Contending that owners may not have access to the necessary documents, but that in most cases the Veterinarian in Charge does, the commenter stated that we should retain the requirement as worded in the regulations prior to publication of this final rule; that is, "Prior to payment of indemnity, proof of destruction shall be furnished to the Veterinarian in Charge." We agree and are retaining the language as it existed prior to publication of this rule.

Proof of destruction, as explained in footnote 4 to § 51.3, may be any of the following documents: (a) A postmortem report; (b) A meat inspection certification of slaughter; (c) A written statement by a State representative, APHIS representative, or accredited veterinarian attesting to the destruction of the animal; (d) A written, sworn statement by the owner or caretaker of the animal attesting to the destruction of the animal; (e) A permit (VS Form 1–27) consigning the animal from a farm or livestock market directly to a recognized slaughtering establishment; or (f) In unique situations where the documents listed above are not available, other similarly reliable forms of proof of destruction.

Although the owner is, in fact, ultimately responsible for furnishing proof of destruction, the Veterinarian in Charge usually receives the documentation from a source other than the owner. This procedure is logistically and administratively satisfactory in most cases, and we do not want the regulations to imply that the owner must personally deliver the proof of destruction.

One commenter maintained that we should state the maximum length of time that the Deputy Administrator (changed in the final rule to Administrator) may grant to owners for presenting registration papers. We have made no change based on this comment.

Our rule states that the Veterinarian in Charge may grant a 60-day extension for presenting registration papers or the Administrator may grant an extension longer than 60 days. Setting a maximum length of time could prevent the Administrator from using his or her judgment in providing owners with sufficient time, in unusual circumstances, to produce registration papers.

Two commenters suggested that we extend the definition of stockyards to include those approved by a State. We have made no change based on this comment.

Under the regulations, indemnity may be claimed, under certain conditions, for animals destroyed because of brucellosis. To claim indemnity for cattle, a claimant must ensure that the cattle are sold under permit to a recognized slaughtering establishment or to a specifically approved stockyard for sale to a recognized slaughtering establishment. "Specifically approved stockyard" is defined in this final rule as premises approved by the Administrator, in accordance with § 78.44 of the regulations, for assembling cattle or bison for sale. To claim indemnity for bison, a claimant must ensure that the bison are sold under permit to a State or Federal slaughtering establishment approved by the Administrator, or to a stockyard approved by the Administrator for sale to a State or Federal slaughtering establishment approved by the Administrator.

These provisions are necessary to ensure that the stockyards meet specific requirements to prevent the spread of brucellosis from these animals. While some States have requirements for stockyards that are comparable to Federal requirements, other States do not. Consequently, State approval of a stockyard would not, in all cases, provide adequate protection against the spread of brucellosis. In States with comparable requirements for stockyards, Federal approval gives us a

mechanism to help ensure compliance with the regulations.

One commenter asserted that the increased indemnity payments should be: (1) Contingent upon use of the Enzyme Linked Immunoabsorbent Assay (ELISA) test; and (2) awarded only for those animals positive to the ELISA test. We have made no change based on this comment.

The ELISA test is a supplemental test used to help determine the presence or absence of blood components associated with brucellosis. Based on the results of this test and other tests, animals are classified as brucellosis negative, brucellosis suspects, or brucellosis reactors. The increased indemnity payments are for brucellosis exposed bison and certain brucellosis exposed cattle. Tests are not used to determine whether an animal has been exposed to brucellosis. A brucellosis exposed animal is defined in § 51.1 as follows: "Except for a brucellosis reactor animal, any animal that: (1) Is part of or has been in contact with a herd known to be affected; or (2) has been in contact with a brucellosis reactor animal for a period of 24 hours or longer; or (3) has been in contact with a brucellosis reactor animal which has aborted, calved or farrowed within the past 30 days, or has a vaginal or uterine discharge." The purpose of offering increased indemnity for brucellosis exposed bison and certain brucellosis exposed cattle destroyed during herd depopulation is to encourage the prompt removal of potential sources of infection. Making the increased indemnity contingent upon an animal having positive results on the ELISA test would delay this process.

Miscellaneous

We have replaced the term "Deputy Administrator" wherever it appeared in the proposal with the term "Administrator," and have likewise replaced the term "Veterinary Services" with the term "APHIS," to reflect changes in terminology that have already been published in a separate document.

Additionally, we have made nonsubstantive changes to revise the control number issued by the Office of Management and Budget with regard to the information collection requirements in part 51, in order to reflect the current control number, and have made several nonsubstantive changes to the proposal to conform with **Federal Register** formatting.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individuals, industries, Federal, State or local government agencies or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under this rule, owners of brucellosis exposed cattle and brucellosis exposed bison destroyed during herd depopulation are eligible for Federal indemnity amounting to an increase of $100 over the previous rates for bison and nonregistered cattle other than dairy cattle. Based on information supplied by APHIS field personnel, we estimate that we will offer herd depopulation for fewer than 400 of the approximately 1.4 million herds of cattle and bison in the United States in the coming year. As the incidence of brucellosis decreases, we expect to offer herd depopulation for a declining number of herds in succeeding years.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and have been assigned OMB control number 0579–0047.

Executive Order 12372

The program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Effective Date

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause under 5 U.S.C. 553 for making this rule effective upon publication in the **Federal Register**. Payments of Federal indemnity for animals destroyed during herd depopulation are made at the rates in effect at the time the Administrator approves depopulation for the herd. If we finalize higher rates of indemnity but delay their effective date, herd owners considering depopulation may postpone action until they become eligible for the new rates. This would hinder efforts to eradicate brucellosis in the United States.

List of Subjects in 9 CFR part 51

Animal diseases, Bison, Brucellosis, Cattle, Hogs, Indemnity payments.

Accordingly, 9 CFR part 51 is amended as follows:

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

1. The authority citation for part 51 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 51.1, the definition of "Department" is removed and two new definitions are added in alphabetical order to read as follows:

§ 51.1 Definitions.

* * * * *

Recognized slaughtering establishment. Any slaughtering establishment operating under the Meat Inspection Act (21 U.S.C. 601–695) or a State meat inspection act.[1]

* * * * *

Specifically approved stockyard. Premises approved by the Administrator, in accordance with § 78.44 of this chapter, for assembling cattle or bison for sale.[2]

* * * * *

§ 51.3 [Amended]

4. In § 51.3, footnotes 1 and 2 and the references to them are redesignated footnotes 3 and 4, respectively.

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[1] The names and addresses of recognized slaughtering establishments may be obtained from the Administrator, c/o Cattle Diseases and Surveillance Staff, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

[2] Notices containing lists of specifically approved stockyards are published in the **Federal Register**. Lists of specifically approved stockyards also may be obtained from the State animal health official, State representatives, or APHIS representatives.

5. In § 51.3, the word "Department" is removed, and the words "United States Department of Agriculture" are added in its place in the following places:

(a) Paragraph (a);
(b) Paragraph (a)(1), first sentence;
(c) Paragraph (b)(1), first sentence;
(d) Paragraph (b)(2), first sentence; and
(e) Paragraph (b)(3), first sentence.

6. In § 51.3, paragraph (a)(2) is revised to read as follows:

§ 51.3 Payment to owners for animals destroyed.

(a) * * *

(2) *Herd depopulation*—(i) *Eligibility.* The Administrator may authorize payment of Federal indemnity [3] by the United States Department of Agriculture to any owner whose herd of cattle or bison is destroyed because of brucellosis. The United States Department of Agriculture shall pay Federal indemnity for brucellosis exposed cattle or brucellosis exposed bison in the herd only when the Administrator determines that destruction of all cattle and bison in the herd will contribute to the brucellosis eradication program. Proof of destruction [4] must be furnished to the Veterinarian in Charge prior to payment of Federal indemnity. The United States Department of Agriculture shall pay Federal indemnity for brucellosis reactor cattle and brucellosis reactor bison in accordance with paragraph (a)(1) of this section.

(ii) *Amount of Federal indemnity.* Payments of Federal indemnity shall be made at the rates in effect at the time the Administrator approves depopulation for the herd. In all States except Alaska, Hawaii, Puerto Rico, and the Virgin Islands of the United States, the amount of Federal indemnity shall not exceed $250 for any registered cattle, $250 for any nonregistered dairy cattle, $150 for any nonregistered cattle other than dairy cattle, and $150 for any bison. In Alaska, Hawaii, Puerto Rico, and the Virgin Islands of the United States, the amount of Federal indemnity shall not exceed $250 for any cattle or bison.

* * * * *

§ 51.6 [Amended]

7. In § 51.6(a), footnote 1 and the references to it are removed.

§ 51.6 [Amended]

8. In § 51.6(c), footnote 2 and the reference to it are redesignated as "5", and the footnote is revised to read as follows:

[5] Markets are approved by the Administrator in accordance with § 76.18 of this chapter.

§ 51.7 [Amended]

9. In § 51.7(a), in the last sentence, the word "Department" is removed and the words "United States Department of Agriculture" are added in its place.

10. In § 51.7, paragraph (b) is revised to read as follows:

§ 51.7 Claims for indemnity.

* * * * *

(b) Claims for indemnity for registered cattle shall be accompanied by the cattle's registration papers issued in the name of the owner. If the registration papers are unavailable or if the cattle are less than 1 year old and are not registered at the time the claim for indemnity is submitted, the Veterinarian in Charge may grant a 60-day extension or the Administrator may grant an extension longer than 60 days for the presentation of registration papers.

§§ 51.3, 51.4, 51.5, 51.6, 51.7, 51.8, and 51.9 [Amended]

11. In addition to the amendments set forth above, in part 51, the number "0579–0067" is removed, and is replaced by the number "0579–0047" in the parenthetical language at the end of §§ 51.3 through 51.9.

Done in Washington, DC, this 17th day of April 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–9457 Filed 4–22–91; 8:45 am]

BILLING CODE 3410–34–M

[3] The Administrator shall authorize payment of Federal indemnity by the United States Department of Agriculture at the maximum per head rates in § 51.3: (a) As long as sufficient funds appropriated by Congress appear to be available for this purpose for the remainder of the fiscal year; (b) In States or areas not under Federal quarantine; (c) In States requesting payment of Federal indemnity; and (d) In States not requesting a lower rate.

[4] The Veterinarian in Charge shall accept any of the following documents as proof of destruction: (a) A postmortem report; (b) A meat inspection certification of slaughter; (c) A written statement by a State representative, APHIS representative, or accredited veterinarian attesting to the destruction of the animal; (d) A written, sworn statement by the owner or caretaker of the animal attesting to the destruction of the animal; (e) A permit (VS Form 1–27) consigning the animal from a farm or livestock market directly to a recognized slaughtering establishment; or (f) In unique situations where the documents listed above are not available, other similarly reliable forms of proof of destruction.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–NM–255–AD; Amendment 39–6971]

Airworthiness Directives; Aerospatiale Model ATR42–300 and ATR42–320 Series Airplanes, with Modification 1572

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes, which requires high frequency eddy current inspections to detect cracks in the webs of main Frame 25 and Frame 27 between Stringer 6 and Stringer 7, and repair, if necessary. This amendment is prompted by reports of cracks found on blank forgings used for the manufacture of Frames 25 and 27. This condition, if not corrected, could result in reduced structural integrity of the fuselage.

EFFECTIVE DATE: May 28, 1991.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Flight Test and Systems Branch, ANM–111; telephone (206) 227–2118. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes, which requires high frequency eddy current inspections to detect cracks in the webs of main Frame 25 and Frame 27 between Stringer 6 and Stringer 7, and repair, if necessary, was published in the **Federal Register** on December 18, 1990 (55 FR 51918).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The commenters supported the rule, but requested that the final rule be revised to clarify that only airplanes

with Modification 1572 (die forging modified in the area in order to increase the thickness of the flange of the frame) are subject to the requirements of the proposed rule. The FAA concurs. The applicability statement of the AD has been revised to clarify that only the airplanes listed in the referenced service bulletin are subject to the requirements of this AD. The economic analysis paragraph, below, also has been revised to reflect the appropriate number of airplanes and the new total cost impact of the AD on U.S. operators. Additionally, the economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

Paragraph E. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

It is estimated that 6 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airline to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total impact of the AD on U.S. operators is estimated to be $990.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Applies to all ATR42-300 and ATR42-320 series airplanes, post Modification 1572, as listed in Aerospatiale Service Bulletin ATR42-53-0057, Revision 2, dated November 9, 1990, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the fuselage, accomplish the following:

A. Within 250 hours time-in-service after the effective date of this AD, perform a high frequency eddy current (HFEC) inspection of the webs of main Frame 25 and Frame 27 (right and left sides) between Stringer 6 and Stringer 7, in accordance with Aerospatiale Service Bulletin ATR42-53-0057, Revision 2, dated November 9, 1990.

B. If no crack is found, the airplane may be returned to service.

C. If the crack length is less than 50.8 mm (2 inches), prior to further flight, stop drill holes at the ends of the crack, in accordance with Aerospatiale Service Bulletin ATR42-53-0057, Revision 2, dated November 9, 1990; and

1. Perform a detailed visual inspection of the crack ends within 250 hours time-in-service following repair. If the crack length is more than 50.8 mm (2 inches), proceed to paragraph D. of this AD.

2. Within 425 hours time-in-service following repair, accomplish Modification 15 S 535 R 00 36, in accordance with the service bulletin.

D. If the crack length is more than 50.8 mm (2 inches), prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA Transport Airplane Directorate.

E. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective May 28, 1991.

Issued in Renton, Washington, on April 4, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-9470 Filed 4-22-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-269-AD; Amendment 39-6983]

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped With Rolls Royce RB211-535 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires inspection of the thrust control cables and wire bundles in the leading edge of both wings; repair, if necessary; and relocation of the wire bundle clamps and securing of the affected wire bundles. This amendment is prompted by reports that insufficient clearance may exist between the thrust control cable assemblies and wire bundles. This condition, if not corrected, could result in damage to the thrust control cable assemblies, which may result in a sudden change in engine thrust and possibly an uncommanded restow of the thrust reverser during a landing rollout.

EFFECTIVE DATE: May 28, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be

examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. G. Michael Collins, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2689. Mailing address: FAA, Northwest Mountain Range, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 757 series airplanes, which requires inspection of the thrust control cables and wire bundles in the leading edge of both wings; repair, if necessary; and relocation of the wire bundle clamps and securing of the affected wire bundles, was published in the **Federal Register** on January 28, 1991 (56 FR 3053).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two comments were received which supported the proposed rule.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 121 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 33 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $10,890.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulation as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, equipped with Rolls Royce RB211-535 engines; as listed in Boeing Service Bulletin 757-76-0008, dated March 22, 1990; certificated in any category. Compliance is required within the next 3,000 hours time-in-service after the effective date of this AD, unless previously accomplished.

To prevent chafing of the thrust control cable assemblies, wire bundle clamps, and wire bundles, accomplish the following:

A. Accomplish the following in accordance with Boeing Service Bulletin 757-76-0008, dated March 22, 1990:

1. Inspect thrust cable assemblies for damage, and replace any damaged thrust control cable assemblies prior to further flight;

2. Inspect the wire bundles for evidence of chafing, and repair any chafed wire bundles prior to further flight; and

3. Modify the wire bundles.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective May 28, 1991.

Issued in Renton, Washington, on April 11, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 91-9460 Filed 4-22-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-22-AD; Amendment 39-6968]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 727 series airplanes, which requires inspection for cracking of the inboard trailing edge flap inboard track, repair if necessary, and eventual replacement of previously repaired tracks. This amendment is prompted by reports of cracking of the flap tracks. This condition, if not corrected, could result in failure of the flap track and possible separation of the inboard trailing edge flap.

EFFECTIVE DATE: May 28, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group

P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Kathi N. Ishimaru, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 227–2778. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 727 series airplanes, which requires inspection for cracking of the inboard trailing edge flap inboard track and eventual replacement of previously repaired tracks, was published in the **Federal Register** on November 6, 1990 (55 FR 46676).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requested that paragraph B. of the proposed rule be deleted. The paragraph requires the replacement of cracked forward hinge fittings. The commenter reasoned that paragraph A. only requires inspection of the flap track for cracks, consequently paragraph B. is not relevant. The FAA does not concur. Paragraph B. is relevant since paragraph F. of the proposed rule requires inspections of both the fitting and the flap track. For clarification paragraph B. has been deleted in the final rule and its contents have been incorporated into paragraph E. of the final rule. The deletion of paragraph B. resulted in the reidentification of paragraph C. through H.

One commenter stated that an AD is not necessary because their routine inspections conducted on this commenter's fleet have not found any cracks. The FAA does not concur. Although this commenter's fleet has not experienced cracking, there have been 16 cracked flap tracks reported. The AD is necessary to ensure that all operators have an inspection program to find cracks that could result in the separation of an inboard trailing edge flap.

One commenter requested that the proposed rule be revised to delete the 7,000 flight cycle threshold for the initial inspection and, instead, permit compliance at the next "C" check. The commenter implied that a high flight cycle flap track could be installed on a low cycle airplane and the track would not be inspected within a prudent time period. The FAA does not concur with the proposal for two reasons: First, a "C" check interval varies from one operator to the next; consequently, it would not provide a uniform inspection threshold for all operators. Second, although the scenario of installing a high cycle track on a low cycle airplane is possible, it is not likely to occur. Normal maintenance would not require removal of a flap track on an airplane with less than 7,000 flight cycles. In addition, as of October 31, 1990, the number of aircraft vulnerable to this scenario is low; there were only a total of 32 Boeing Model 727 airplanes worldwide that had less than 7,000 flight cycles.

Since issuance of the proposed rule, the FAA has determined that airplanes inspected and modified in accordance with Figure 1 of Boeing Service Bulletin 727–32–340, Revision 1, may delay the initial inspection until 9,000 flight cycles since modification. This is acceptable because a thorough nondestructive test inspection was accomplished at the time of the modification. Paragraph A. of the final rule has been revised to allow this extension.

One commenter stated that it did not understand what must be done on airplanes modified in accordance with Revision 1 of the service bulletin. As noted above, paragraph A. of the AD has been revised to clearly state the inspection threshold for these airplanes. In addition, paragraph E. of the AD has been revised to clarify that no flight cycles may be accumulated between the inspection and modification in accordance with Revision 3 of the service bulletin.

Paragraph F. of the proposed rule states that inspection and modification in accordance with Figure 1 of Boeing Service Bulletin 727–32–340, Revision 3, constitutes terminating action for the AD inspections. Since issuance of the proposed rule, the FAA has determined that Revision 2 of the service bulletin contains the same inspection and a similar modification. Revisions 2 and 3 specify slightly different bolt torque values. The differences are not significant; therefore, paragraph E. of the final rule has been revised to include modification in accordance with Revision 2 of the service bulletin as terminating action.

One commenter requested that the rule be revised to provide the option of repairing a track in accordance with Boeing Drawing 65C36120, in lieu of replacing the track. The FAA does not concur because the drawing's applicability is not clearly defined. Each track must be evaluated to determine if the repair is acceptable. An operator may choose to request an alternative method of compliance in accordance with paragraph F. of the final rule if the repair can be shown to be acceptable.

One commenter requested that tracks repaired in accordance with Boeing Drawing 65–68240 be allowed to remain in service, provided the cracks have not propagated. The operator proposed to remove the hinge fitting from the track and eddy current inspect the track for cracks. The proposed rule requires eventual replacement of these repaired tracks. The FAA does not concur with the proposed extension. The repair drawing's applicability was not clearly defined. The extension of a repaired track's life must be evaluated on an individual basis. In some cases, the proposed inspection would be adequate, but for other cases, this may not be true. An operator has the option of requesting an alternative method of compliance in accordance with paragraph F. of the final rule.

One commenter requested that the criteria for the replacement of a repaired track be based only on flight cycles because the cracks have been attributed to fatigue. The FAA does not concur. The orientation and length of cracks on tracks repaired in accordance with Boeing Drawing 65–68420 are not known. These unknowns result in variable crack growth rates. Consequently, the FAA has determined that both calendar times and flight cycle limits are appropriate.

One commenter requested that proposed paragraph A. be revised to state that the detailed visual inspection be performed in accordance with Boeing Service Bulletin 727–32–340, Revision 3. The FAA does not concur because the service bulletin does not clearly define the required inspection. This commenter also stated that the proposed inspection of the track at the fastener holes cannot be accomplished without bolt removal. It is the FAA's intent to require inspection only of exposed areas with the bolts installed. Paragraph A. has been revised in the final rule to clarify the inspection area.

For the purpose of clarification, paragraph B., has been changed to specify that the repetitive inspections required by paragraph A. are to continue after the repair.

Paragraph F. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per

manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 1,695 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 1,172 airplanes of U.S. registry will be affected by this AD, that it will take approximately 29 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be 1,869,340.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 727 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent separation of an inboard trailing edge flap due to cracking, accomplish the following:

A. Except as provided in paragraph D. of this AD, perform a detailed visual inspection for cracks in the exposed areas of the inboard trailing edge flap inboard track at the main landing gear door forward hinge fitting attachment holes within the time specified in subparagraph 1., or 2., below, as applicable.

1. Prior to the accumulation of 7,000 flight cycles since manufacture or within the next 1,000 flight cycles after the effective date of this AD, whichever occurs later.

2. For flap tracks that were inspected and modified in accordance with Boeing Service Bulletin 727-32-340, Revision 1, dated December 10, 1987, Figure 1, prior to the accumulation of 9,000 flight cycles since modification, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

Repeat the inspections required by paragraphs A.1. and A.2. at intervals not to exceed 3,000 flight cycles.

Note: The hinge fitting bolts do not have to be removed to accomplish this inspection.

B. If cracked flap tracks are detected that do not exceed the limits specified in Figure 1 of Boeing Service Bulletin 727-32-0340, Revision 3, dated May 24, 1990, (hereafter referred to as "the service bulletin"), prior to further flight, repair in accordance with the service bulletin or replace the flap track. After repair, continue the repetitive inspections in accordance with paragraph A. of this AD.

C. If cracked flap tracks are detected that exceed the limits specified in Figure 1 of the service bulletin, prior to further flight, replace the track.

D. Flap tracks repaired in accordance with Boeing Drawing 65-68420 must be replaced within the time interval specified in subparagraph 1. or 2., below, whichever occurs later.

1. Within 2,000 flight cycles or 1 year since repair, whichever occurs first; or

2. Within 1,000 flight cycles or 6 months after the effective date of this AD, whichever occurs first.

E. Inspection and modification in accordance with Figure 1 of Boeing Service Bulletin 727-32-340, Revision 2, dated September 7, 1989, or Revision 3, dated May 24, 1990, and replacement of cracked forward hinge fittings, constitutes terminating action for the inspections required by paragraph A. of this AD. There must be no flight cycles accumulated between the accomplishment of the inspection, replacement of cracked forward hinge fittings, and modification.

F. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective May 28, 1991.

Issued in Renton, Washington, on April 3, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-9472 Filed 4-22-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-141-AD; Amendment 39-6970]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires inspection of certain nacelle strut midspar fuse pins, and replacement, if necessary. This amendment is prompted by a report of a 2.55-inch long crack in a new style fuse pin, on which necessary primer and corrosion preventive compound had not been applied. This condition, if not corrected, could result in failure of the pin and separation of the engine from the airplane.

EFFECTIVE DATE: May 28, 1991.

ADDRESSES: The applicable service information may be obtained from

Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Satish K. Pahuja, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2781. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 747 series airplanes, which requires inspection of certain nacelle strut midspar fuse pins, and replacement, if necessary, was published in the **Federal Register** on November 6, 1990 (55 FR 46680).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The manufacturer stated that the part numbers of the new style fuse pins were quoted incorrectly in the proposed rule. The FAA concurs. The FAA inadvertently specified obsolete part numbers in the proposed rule where part numbers of the new style fuse pins were intended. The descriptive information, other than part numbers, contained in the proposed rule is considered to have been sufficiently clear such that the intent of the proposal was clear to all interested persons. The part numbers have been corrected in the final rule.

The manufacturer also recommended that no further inspection should be required if application of the corrosion preventive compound is found to be present. The FAA does not concur. Inspection of spare fuse pins by the manufacturer revealed that some of the new style fuse pins had only partial application of the primer. These fuse pins were found to have the required application of the corrosion preventive compounds. The incorrect application or absence of primer could lead to the onset of corrosion. For this reason, inspection beyond determining the presence of corrosion preventive compounds is considered necessary.

One commenter expressed the opinion that the proposed rule is unnecessary. The commenter reasoned that the fuse pins were coated with primer during the manufacturing process, and the corrosion preventive compounds are applied during installation of the fuse pins. The FAA does not concur. The FAA has determined that some of the new style fuse pins were not primed according to the manufacturer's requirements during the manufacturing process. Furthermore, the application of the corrosion preventive compound was also absent on the new style fuse pin which was found cracked in service. The absence of primer or corrosion preventive compound could lead to corrosion and/or cracking of the fuse pins.

One commenter stated that the engine removal will be required to gain access to the fuse pins, and the cost analysis did not include manhours required for access to the fuse pins and restoration of the struts. The FAA concurs in part. The access to the fuse pins can be obtained without removing the engines. The fuse pins can be removed from the strut by providing proper support to the engines. However, the cost impact analysis should have included the manhours required to gain access to the fuse pins and restoration of the struts. The cost impact analysis paragraph has been revised to indicate that approximately 164 manhours per airplane would be required for the access, inspection of the fuse pins, and restoration of the struts.

The commenter also recommended that the compliance period for the inspection be increased from the proposed 2,000 flight hours to 4,500 flight hours after the effective date of the AD, to permit scheduling the inspection during the next "C" check at the main maintenance base. The commenter justified the extension based on the service experience of the old style fuse pins, and stated that the extension is necessary to prevent the financial burden imposed by the special scheduling of an inspection prior to the "C" check. The FAA does not concur. The proposed rule addresses the unsafe condition resulting from the deficiency observed in the new style fuse pins; this unsafe condition and its safety implication were the basis for the development of the compliance requirements of the proposed rule. The proposed compliance time represents the maximum interval of time allowable wherein the inspection and necessary replacement could reasonably be accomplished and an acceptable level of safety could be maintained.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 700 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 174 airplanes of U.S. registry will be affected by this AD, that it will take approximately 164 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,569,480.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 747-100, -200, and -300 series airplanes, line number 001 through 827, certificated in any category, equipped with the new style nacelle strut midspar fuse pins, Part Numbers 69B90909-1, 69B90909-2, 69B90909-14, 69B90909-15, 69B90909-16, and 69B90909-17, installed in accordance with Boeing Service Bulletin 747-54-2063, Revision 6, dated July 20, 1989, or previous FAA-approved revisions, or installed during the manufacture of the airplane. Compliance required as indicated, unless previously accomplished.

To prevent failure of the new style nacelle strut midspar fuse pin and separation of the engine from the airplane, accomplish the following:

A. Prior to the accumulation of 12,000 total flight hours, or within the next 2,000 flight hours after the effective date of this AD, whichever occurs later, inspect the new style nacelle strut midspar fuse pins for the presence of primer and corrosion preventive compound, in accordance with Boeing Service Bulletin 747-54-2063, Revision 7, dated March 29, 1990.

1. If primer and corrosion preventive compound are present, no further action is required.

2. If primer and corrosion preventive compound are missing, prior to further flight, inspect the pin for corrosion and cracks, in accordance with Boeing Service Bulletin 747-54-2063, Revision 7, dated March 29, 1990.

a. If corrosion or cracks are found, prior to further flight, replace the fuse pin in accordance with Boeing Service Bulletin 747-54-2063, Revision 7, dated March 29, 1990.

b. If no corrosion or cracks are found, the fuse pin may be returned to service after application of primer and corrosion preventive compound in accordance with Boeing Service Bulletin 747-54-2063, Revision 7, dated March 29, 1990.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington, 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

This amendment becomes effective May 28, 1991.

Issued in Renton, Washington, on April 4, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-9469 Filed 4-22-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-188-AD; Amendment 39-6969]

Airworthiness Directives; Boeing Model 707, 727, and 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 707, 727, and 737-200 series airplanes and to all Boeing Model 737-300, 737-400, and 737-500 series airplanes, which requires modification of the crew call horn electrical circuits. This action is prompted by reports of overheated printed circuit card assemblies caused by electrical short circuit-type failures in the crew call horn. This condition, if not corrected, could result in damage to adjacent circuitry, release of smoke into the airplane, and possible fire.

EFFECTIVE DATE: May 28, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Slotte, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2797. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 707, 727, and 737-200 series airplanes and all Boeing Model 737-300, 737-400, and 737-500 series airplanes, which requires inspection; repair, if necessary; and modification of the crew call horn electrical circuits, was published in the **Federal Register** on October 23, 1990 (55 FR 42723).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter concurred with the proposed rule as written.

Another commenter expressed concern that the FAA would adopt a rule mandating a circuit change without the guidance of a manufacturer's service bulletin on the subject. The commenter considered that, since both the airplane and the Flight Instrument Accessory Unit (FIAU) and Integrated Flight System Accessory Unit (IFSAU) are made by Boeing, Boeing should be the focal point of FAA activity to obtain an expedited and approved service bulletin; this would greatly assist the affected operators, since the method of accomplishment would be uniform throughout the fleet and the costs associated with the requirements of the AD could be minimized by the operators. Since the addressed safety hazard was originally identified, the FAA has been working closely with the manufacturer to expedite the release of approved service bulletins. Since this problem exists over such a wide variety of airplane models and customer configurations, the time required to identify all affected airplanes and to develop a subsequent engineering solution is quite lengthy. The FAA has determined that it was in the best interest of the traveling public's safety to issue the Notice and, thus, alert affected operators of the potential danger, rather than wait for the appropriate service bulletins to be released. A service bulletin is not a prerequisite for an AD. Subsequent to the closing of the comment period the manufacturer has released service bulletins for the Model 727 and 737 series airplanes. The FAA has reviewed and approved Boeing Service Bulletins 727-23-0052, and 737-23-1059, both dated January 31, 1991, which describe installation of a circuit breaker in the crew call horn power circuit. The final rule has been changed to specify the service bulletins as the source of the approved modification procedures. The service bulletin for the Model 707 series

airplane is expected to be released by the manufacturer in the near future. The FAA will review that service bulletin when released and, if acceptable, will approve modification in accordance with the service bulletin as an acceptable alternative method of compliance. Under current practice, the manufacturer will then notify affected operators of the approval. The proposed compliance time of 180 days is considered to be an adequate amount of time for the operators to receive the appropriate service bulletin from the manufacturer.

The manufacturer recommended the deletion of 20 Model 727 series airplanes from the applicability paragraph; those 20 airplanes, previously identified as having an Inertial Navigation System (INS), contain only the provisions for such a system and do not have the circuitry installed that is the subject of this AD. The FAA agrees with this comment and has deleted the 20 subject Model 727 series airplanes from the applicability of the final rule.

The manufacturer also suggested that the requirement to visually inspect for damage to components within the Flight Instrument Accessory Unit, Integrated Flight System Accessory Unit, and Inertial Navigation System Battery Monitor Module (FIAU, IFSAU, INS Battery Monitor Module, respectively), be deleted. The manufacturer stated that the type of damage caused to the internal circuitry of the FIAU, IFSAU, or INS Battery Monitor Module by a shorted crew call horn would render it inoperable; thus, such damage would be detected during subsequent troubleshooting. The FAA agrees with this comment and has revised the final rule accordingly.

The manufacturer also provided correct part numbers for the affected circuit card assemblies, which were incorrectly called out in the NPRM. The final rule has been clarified to call out the corrected part numbers for the affected circuit card assemblies for the FIAU, IFSAU, and INS Battery Monitor.

Paragraph D. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described above. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 28 Model 707, 30 Model 727, 9 Model 737-200, 630 Model 737-300, 122 Model 737-400, and 18 Model 737-500 series airplanes of the affected design in the worldwide fleet. It is estimated that no Model 707, 6 Model 727, 2 Model 737-200, 387 Model 737-300, 46 Model 737-400, and 6 Model 737-500 series airplanes of U.S. registry will be affected by this AD (a total of 447 airplanes). It will take approximately 5 manhours per airplane to accomplish the required actions, and the average labor cost will be $55 per manhour. The cost of the required parts is estimated to be $50 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $145,275.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 737-300 series airplanes, and 737-400 series, and 737-500 series airplanes, prior to line position 2000, certificated in any category.

Also applies to Model 707 series airplanes with the following serial numbers, certificated in any category: 20474, 20669, 20830, 20831, 20832, 20833, 20834, 20835, 21081, 21092, 21103, 21104, 21123, 21124, 21125, 21126, 21127, 21128, 21129, 21228, 21261, 21334, 21367, 21368, 21396, 21428, 21475, 21956.

Also applies to Model 727 series airplanes with the following serial numbers, certificated in any category: 21040, 21080, 21091, 21229, 21230, 21347, 21348, 21349, 21426, 21427, 21458, 21459, 21460, 21595, 21636, 21844, 21845, 21846, 21847, 21945, 21946, 21947, 21948, 22268, 22359, 22360, 22361, 22362, 22763, 22968.

Also applies to Model 737-200 series airplanes with the following serial numbers, certificated in any category: 21667, 21613, 21957, 22431, 22620, 22628, 22777, 22778, 22779.

Compliance required within the next 180 days after the effective date of this AD, unless previously accomplished.

To prevent damage to the circuits contained within the Flight Instrument Accessory Unit, Integrated Flight Systems Accessory Unit, or Inertial Navigation System Battery Monitor Module, and to surrounding equipment, accomplish the following:

A. For Model 707 series airplanes: Install a modification to add a 2-ampere thermal circuit breaker electrically located between the crew call horn drive circuitry, located on printed circuit card assembly (part number 69-66423-11) contained within the Flight Instrument Accessory Unit or contained in the Inertial Navigation System Battery Monitor Module (part number 65-38292-192), as applicable, and the crew call horn. The modification must be approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

B. For Model 727 series airplanes: Install a modification to add a 2-ampere thermal circuit breaker electrically located between the crew call horn drive circuit and the crew call horn in accordance with Boeing Service Bulletin 727-23-0052, dated January 31, 1991.

C. For Model 737 series airplanes: Install a modification to add a 2-ampere thermal circuit breaker electrically located between the crew call horn drive circuitry and the crew call horn in accordance with Boeing Service Bulletin 737-23-1059, dated January 31, 1991.

D. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance

Inspector (PMI), who may concur or comment and then send it to the Manager, Seattle ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective May 28, 1991.

Issued in Renton, Washington, on April 3, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-9471 Filed 4-22-91; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 100

[CGD11-90-09]

Regatta; Opening Day Marine Parade, San Francisco Bay

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being revised for the annual Opening Day Marine Parade, San Francisco Bay. This event is held each year on the last Sunday in April as published in the Local Notices to Mariners. The regulations are needed to provide for the safety of life on navigable waters during the event. The revision to existing regulations is being made to change the boundaries of the designated regulated areas during the event.

EFFECTIVE DATE: 28 April 1991.

FOR FURTHER INFORMATION CONTACT: Lieutenant Paul L. Newman, (415) 399-3445.

SUPPLEMENTARY INFORMATION: On February 26, 1991, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (56 FR 7824). Interested persons were requested to submit comments, and no comments were received. Good cause exists for making these regulations effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable as there was insufficient time to publish the regulations 30 days in advance of the event for which the regulations are needed or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are Lieutenant Paul L. Newman, project officer, Coast Guard Group San Francisco, and Lieutenant Commander Allen Lotz, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Comments

No comments were received.

Discussion of Regulations

The Pacific Inter-Club Yacht Association is sponsoring this annual event which involves a marine parade through the area as described in these regulations. The Commander, Eleventh Coast Guard District is issuing these regulations to extend the restricted area used in prior years. These regulations will only be in effect for several hours one day each year, and the impact on routine navigation is expected to be minimal.

Paperwork Reduction Act

These regulations contain no information collection or recordkeeeping requirements.

Economic Assessment and Certification

These regulations are not considered to be either major under Executive Order 12291 or significant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of these regulations are expected to be so minimal that a full regulatory evaluation is unnecessary. The Coast Guard certifies that these regulations will not have a significant impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles contained in Executive Order 12612, and it has been determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment Assessment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, they will have no significant environmental impact and are categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

"Marine safety, Navigation (water)"

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.1103 is revised to read as follows:

§ 100.1103 Opening Day Marine Parade, San Francisco Bay.

(a) This section is effective from 0800 to 1500 PDT, 28 April 1991, and thereafter annually on the last Sunday in April as published in the Local Notices to Mariners.

(b) The following areas are designated "regulated areas" during the marine parade.

(1) *Northern Area in Raccoon Strait.* The area between a line drawn from Bluff Point on the southeastern side of Tiburon Peninsula to Point Campbell on the northern edge of Angel Island, and a line drawn from Peninsula Point on the southern edge of Tiburon Peninsula to Point Stuart on the western edge of Angel Island.

(2) *Southern Area.* The area defined by a line drawn from Fort Point (37-48.66N 122-28.64W) 079 Degrees True approximately 5,000 yards to a point located at 37-49.15N 122-25.61W, thence 091 Degrees True to the Blossom Rock Bell Buoy (37-49.10N 122-24.20W), thence 200 Degrees True to the Northeast corner of Pier 35.

(c) *Regulations.* (1) All vessels entering the regulated area shall follow the parade route and maintain an approximate speed of six knots.

(2) All vessels in the Northern Area shall proceed in a generally southwesterly direction except in that area immediately adjacent to the shore of Angel Island where vessels may transit in a northeasterly direction.

(3) Vessels departing the San Francisco Yacht Harbor may transit the area only with the permission of and subject to the direction of Coast Guard patrol personnel.

(4) The parade will be interrupted, as necessary, to permit the passage of commericial vessel traffic.

(5) No vessel shall anchor or drift in the regulated areas.

(6) All vessels in the vicinity of the parade shall comply with the

instructions of the U.S. Coast Guard patrol personnel.

Dated: April 17, 1991.

M.E. Gilbert,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 91-9494 Filed 4-22-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

COTP Cleveland Regulation 91-01

Safety Zone Regulations; Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Cuyahoga River which will run along the banks of the river, 100 yards above and 100 yards below the Carter Road Bridge extending out 10 feet into the channel. Entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Cleveland .

EFFECTIVE DATES: This regulation will be in effect from 8 a.m., April 3, 1991, to 4:30 p.m. January 15, 1992, unless otherwise terminated by the Captain of the Port, Cleveland.

FOR FURTHER INFORMATION CONTACT: CDR Brian G. Basel, Captain of the Port, Cleveland (216) 522-4406.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to preclude damage to vessels or injury to people in the vicinity.

Drafting Information

The drafters of this regulation are CDR Brian G. Basel, the Captain of the Port, Cleveland, and LCDR M. Eric Reeves, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the repairs being made to the Carter Road Bridge on the Cuyahoga River during these times. The safety zone is needed to ensure the protection of lives and prevent damage to recreational vessels and commercial vessels. The American Bridge Company will be making the repairs to the bridge during these times, and will be utilizing tugs and crane barges to effect bridge repairs.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. A new § 165.T0925 is added to read as follows:

§ 165.T0925 Safety zone: Cuyahoga River, Cleveland, OH.

(a) *Location.* The following area is a safety zone: The water touching the banks of the Cuyahoga River 100 yards above the 100 yards below the Carter Road Bridge extending out 10 feet into the channel.

(b) *Effective Date:* This regulation is effective from 8 a.m. April 3, 1991 to 4:30 p.m. January 15, 1992 unless otherwise terminated by the Captain of the Port, Cleveland.

(c) *Regulations: General Rule.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited with the exception of construction vessels contracted by or belonging to the American Bridge Company unless authorized by the Captain of the Port, Cleveland.

Dated: April 3, 1991.

B.G. Basel,

Captain of the Port, Cleveland, Ohio.

[FR Doc. 91-9493 Filed 4-22-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3872-4]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving a revision to the Oregon state implementation plan (SIP) as submitted by the Oregon State Department of Environmental Quality on September 14, 1989. This revision, OAR 340-22-300 (Standard for Automotive Gasoline), establishes a regulation to limit the volatility (vapor pressure) from motor vehicle fuels. This rule will enhance the volatility control program in Oregon since both the State of Oregon and the EPA will have enforcement authority.

EFFECTIVE DATE: This action will be effective on June 24, 1991 unless notice is received before May 23, 1991 that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment period.

ADDRESSES: Documents which are incorporated by reference are available for public inspection at the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC. Copies of the materials submitted to EPA may be examined during normal business hours at:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Air Programs Branch, Docket #10A-90-1, Environmental Protection Agency, 1200 Sixth Avenue, AT-082, Seattle, Washington, 98101.

State of Oregon, Department of Environmental Quality, 811 SW. Sixth, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: David Kircher, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101, Telephone: 206/553-4198, FTS: 399-4198.

SUPPLEMENTARY INFORMATION:

I. Background

On March 22, 1989, the Environmental Protection Agency (EPA) published a final rule which limits the Reid vapor pressure (RVP) of summertime commercial gasoline. Depending on the area of the country, gasoline RVP must not exceed 10.5 pounds per square inch (psi), 9.5 psi, or 9.0 psi during the regulatory control period (see 40 CFR 80.27). Prior to the publication of this final rule, the Oregon Department of Environmental Quality (ODEQ) initiated a rulemaking process to limit gasoline volatility in that state. After the federal rule was published, ODEQ decided to continue the rulemaking action, even though the volatility programs were nearly identical. This action would give ODEQ the authority to enforce the volatility program locally; in return, this provision will supplement EPA's authority to enforce volatility requirements.

Section 211(c)(4)(A) of the Clean Air Act (CAA) (42 U.S.C. 7545(c)(4)(A)), as amended, states that "no state . . . may prescribe or attempt to enforce, for purposes of motor vehicle emission control, any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle or motor vehicle engine" if EPA has prescribed a control on the fuel. There are exceptions, however. For instance, this provision does not apply if the state control is identical to the control prescribed by EPA. See section 211(c)(4)(A)(ii). In addition, section 211(c)(4)(C) allows a state to prescribe and enforce a control or prohibition of a fuel in a motor vehicle which differs from the federal program if an applicable implementation plan under section 110 so provides. The Administrator may approve such a provision if he finds that the state control is necessary to achieve the national ambient air quality standard which the plan implements.

ODEQ has submitted the gasoline volatility rule as an amendment to the Oregon State Implementation Plan (SIP) pursuant to 40 CFR 51.5 and 51.6. ODEQ's rule is similar to the federal rule, but there are a few differences. First, ODEQ's rule prohibits a person from selling gasoline in excess of 10.5 psi during the period of June 1 through September 15 of each year. The federal rule prohibits the sale of gasoline in excess of the applicable level (in this case 10.5 psi) between June 1 to September 15 for retail outlets and wholesale purchaser-consumer facilities and May 1 to September 15 for all other facilities within the gasoline distribution system. (See 40 CFR 80.27) Secondly, the ODEQ rule also provides an exemption for gasoline that was delivered to the retail outlet more than 14 days preceding the periods established, unlike the federal rule. One final difference is the test methods for determining compliance. Besides the federal procedures delineated in 40 CFR part 80, the ODEQ rule also allows ASTM D#323 methods as well as methods established under the California Air Resources rule, title 13 section 2251.

II. EPA Action

Today EPA is approving OAR-340-22-300 (Standard for Automotive Gasoline) in full, with the exception of section 300 (1)(b) and section 300 (6), as a revision to the Oregon SIP. In OAR 340-22-300 (6), EPA is approving the sampling procedures and test methods specified in 40 CFR part 80. However, it is taking no action today on the other test procedures referenced in section 300 (6) specifically the ASTM D#323 method and the California Air Resources rule methods. EPA is approving ODEQ's regulation since, during the period of time that ODEQ enforces the regulation, the standards are identical to EPA's rule and, therefore, are consistent with section 211 of the CAA. This rule will enhance the volatility control program in Oregon since both the State of Oregon and the EPA will have enforcement authority. Since the Portland-Vancouver Metropolitan area is currently designated "nonattainment" for ozone, this regulation will be important in helping the area to attain and eventually maintain the ozone standard.

The federal rule still applies to ODEQ, as specified in 40 CFR part 80, during the regulatory control periods, which are June 1 to September 15 for retail outlets and wholesale purchaser-consumer facilities and May 1 to September 15 for all other facilities.

III. Administrative Review

The public is advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days from the date of this **Federal Register** notice that someone wishes to submit adverse or critical comments on any or all of the revisions approved herein, the action on these revisions will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action on the revision and another will begin a new rulemaking by announcing a proposal of EPA's action on the revision and establishing a comment period.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. section 605(b), I certify this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years and subsequently extended to April 6, 1991.

The Agency has reviewed this request for revision of the federally-approved state implementation plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 24, 1991. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 6, 1990.

Dana A. Rasmussen,

Regional Administrator.

Title 40, chapter I of part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart MM—Oregon

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1970 is amended by adding paragraph (c)(88) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(88) A revision to the Oregon State Implementation Plan was submitted by the Director of the Oregon Department of Environmental Quality on September 14, 1989. The revision OAR-340-22-300 (Standard for Automotive Gasoline) is approved in full with the exception of section 300 (6). EPA only approves the sampling procedures and test methods specified in 40 CFR part 80 and is taking no action on the other test procedures referenced in section 300 (6) specifically the ASTM D#323 method and the California Air Resources rule methods.

(i) *Incorporation by reference.* (A) Letter dated September 14, 1989, from the Director of the Oregon Department of Environmental Quality to EPA Region 10. (B) Oregon Administrative Rule,

chapter 340, Division 22 (General Gaseous Emissions), section 300 (standard for Automotive Gasoline) as adopted by the Environmental Quality Commission on June 2, 1989.

[FR Doc. 91-9401 Filed 4-22-91; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[FRL-3924-3]

Michigan; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Michigan has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act of 1976 as amended (hereinafter "RCRA" or the "Act"). The Environmental Protection Agency (EPA) has reviewed Michigan's application and has reached a decision, subject to public review and comment, that Michigan's hazardous waste program revisions satisfy all the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to Michigan to operate its expanded program, subject to authority retained by EPA under the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616, November 8, 1984, hereinafter "HSWA").

DATES: Final authorization for Michigan's program revisions shall be effective June 24, 1991, unless EPA publishes a prior **Federal Register** (FR) action withdrawing this immediate final rule. All comments on Michigan's program revision application must be received by 4:30 p.m. central time on May 23, 1991. If an adverse comment is received, EPA will publish either (1) a withdrawal of this immediate final rule or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

ADDRESSES: Copies of Michigan's final authorization application are available for inspection and copying at the following addresses from 9 a.m., to 4 p.m.; Michigan Department of Natural Resources, 608 W. Allegan, South Ottawa Tower, Lansing, Michigan. Contact: Jim Roberts, Phone: (517) 373-2487; U.S. EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, DC 20460, phone (202) 382-5922; U.S. EPA, Region V, 230 S. Dearborn, Chicago, Illinois 60604, contact: Judy Greenberg, (312) 886-4179. Written comments should be sent to Ms. Judy Greenberg, Michigan Regulatory Specialist, U.S. EPA, Office of RCRA, 5HR-JCK-13, 230 S. Dearborn, Chicago, Illinois 60604, phone (312) 886-4179.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Greenberg, Michigan Regulatory Specialist, U.S. Environmental Protection Agency, Region V, Waste Management Division, Office of RCRA, Program Management Branch, Regulatory Development Section 5HR-JCK-13, 230 South Dearborn, Chicago, Illinois 60604, Phone: (312) 886-4179 (FTS 8-886-4179).

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. For further explanation see section C of this notice.

In accordance with 40 CFR 271.21(a), revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessary because of EPA's regulations in 40 CFR parts 124, 260-268 and 270.

B. Michigan

Michigan initially received final authorization for its base RCRA program effective on October 30, 1986 (51 FR 36804-36805, October 16, 1986). Michigan received authorization for revisions to its program effective on January 23, 1990 (54 FR 225, November 24, 1989). On December 31, 1990, Michigan completed an additional revision application. EPA has reviewed this application and has made an immediate final decision, subject to public review and comment, that Michigan's hazardous waste program revisions are equivalent to the Federal program revisions listed below and satisfy all the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization to Michigan for its additional program revision.

On June 24, 1991, (unless EPA publishes a prior FR action withdrawing this immediate final rule), Michigan will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which are analogous to the following provisions of the Federal program:

Federal requirement	Analogous state authority
* Delisting (50 FR 28702, July 15, 1985).	Rule 299.9211 effective 2/15/89.
* Dust Suppression (50 FR 28702, July 15, 1985).	Rule 299.9801 effective 2/15/89.
* Cement Kilns (50 FR 28702, July 15, 1985).	Rules 299.9206(2) effective 2/15/89; 299.9214 effective 2/15/89; 299.9802(3) effective 2/15/89.
* Research and Development Permits, (50 FR 28702, July 15, 1985).	Rules 299.9501(4) and (6) effective 2/15/89; 299.9502 effective 2/15/89.
Closure/Post-Closure Care for Interim Status Surface Impoundments (52 FR 8704, March 19, 1987).	Rules 299.9502(8) effective 2/15/89; 299.9601(8) effective 12/28/85; 299.11003 effective 2/15/89.
* Land Disposal Restrictions (52 FR 21010, June 4, 1987).	Rules 299.9311 effective 4/20/88; 299.9601(1) effective 12/28/85; 299.9609 effective 4/20/88; 299.9627 effective 4/20/88; 299.11003 effective 2/15/89.
Definition of Solid Waste Technical Corrections (52 FR 21306, June 5, 1987).	Rules 299. 9214 effective 2/15/89; 299.9801 effective 2/15/89.
Amendments to Part B Information Requirements for Disposal Facilities (52 FR 23447, June 22, 1987).	Rules 299.9506 (4) and (5) effective 4/20/88.
* California List Waste Restrictions (52 FR 25759, July 8, 1987).	Rules 299.9204(3) effective 4/20/88; 299.9311 effective 4/20/88; 299.9504(1) effective 4/20/88; 299.9601 effective 12/28/85; 299.9627 effective 4/20/88; 299.11001 effective 2/15/89.

* Indicates HSWA Provision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization. EPA has previously suspended issuance of permits for the other provisions on October 30, 1986, and on January 23, 1990, the effective dates of Michigan's final authorizations for the RCRA base program, and for the Non-HSWA Cluster I and Cluster II revisions.

Michigan is not authorized to operate the Federal program on Indian lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Effect of HSWA on Michigan's Authorization

1. General

Prior to the Hazardous and Solid Waste Amendments to RCRA, a State with final authorization administered its hazardous waste program instead of, or entirely in lieu of, the Federal program. Except for enforcement provisions not applicable here, EPA no longer directly applied the Federal requirements in the authorized State and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent, Federal requirements were promulgated or enacted, the State was obligated to obtain equivalent authority within specified time frames. New Federal requirements usually did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new HSWA requirements and prohibitions take effect in authorized States at the same time they take effect in non-authorized States. EPA carries out those requirements and prohibitions directly in authorized and non-authorized States, including the issuance of full or partial HSWA permits, until EPA grants the State authorization to do so. States must still, at one point, adopt HSWA-related provisions as State law to retain final authorization. In the interim, the HSWA provisions apply in authorized States.

As a result of the HSWA, there is a dual State/Federal regulatory program in Michigan. To the extent HSWA does not affect the authorized State program, the State program will operate in lieu of the federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce those HSWA requirements in Michigan until the State is authorized for them.

Once EPA authorizes Michigan to carry out a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision or prohibition. Until that time, the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

Today's rulemaking includes authorization of Michigan's program for several requirements implementing the HSWA. Those requirements implementing the HSWA are denoted by an asterisk in the table found in the "Michigan" section of this notice. Any effective State requirement that is more stringent or broader in scope than a Federal HSWA provision will continue to remain in effect; thus, regulated handlers must comply with any more stringent State requirements.

EPA published a FR notice that explains in detail the HSWA and its affect on authorized States (50 FR 28702–28755, July 15, 1985).

2. Land Disposal Prohibitions

With this decision, EPA intends to authorize Michigan to impose certain land disposal prohibitions. The regulations implementing the land disposal prohibitions are found in 40 CFR part 268. Under Sections 5, 6, 42(b), and 44 of part 268, EPA has authority to consider petitions for case-by-case extensions to prohibition effective dates, exemptions to prohibitions based upon a showing of no potential for waste migration, alternate treatment methods, and variances from treatment standards, respectively. Consideration of the sections 5, 42(b) and 44 petitions is permanently reserved to EPA because consideration of those petitions requires a national perspective. In the future, EPA may authorize States to consider the section 6 petitions. However, EPA is currently requiring that these petitions be handled at EPA Headquarters. It should be noted that Michigan has its own procedures for considering petitions for exemptions to prohibitions based upon a showing of no potential for waste migration. Nothing in RCRA prohibits a State from adopting requirements that parallel Federal requirements. Therefore, petitioners seeking a section 6 exemption must be granted approval by both EPA and the State.

On August 17, 1990, EPA promulgated the most recent phase of the regulatory framework implementing the land disposal prohibitions. EPA promulgated earlier phases on November 7, 1986, June 4, July 8, and October 10, 1987, August 17, 1988, February 27, May 2, June 23, and September 6, 1989, and June 1, June 13, and August 17, 1990. Michigan's rulemaking process follows the EPA rulemaking process. An unavoidable consequence is that Michigan's current land disposal prohibitions program is not as comprehensive as the Federal program. Since each new phase of the land disposal prohibitions regulations has included modifications to earlier phases and, in most instances, those modifications have made the regulatory framework more stringent, certain Michigan's land disposal requirements may be superceded by Federal land disposal requirements.

In this action, EPA intends to authorize Michigan only for the June 4, 1987, and July 8, 1987, phases of land disposal prohibition regulations. However, the balance of the Federal regulations are, because they are promulgated pursuant to HSWA, effective in Michigan and all other States and are directly implemented by EPA. Regulated handlers must comply with any requirements of the retained Federal land disposal prohibitions program that may be more stringent than the analogous requirements of the Michigan program. Conversely, because compliance with RCRA does not exempt regulated handlers from compliance with State law, such handlers must also meet any requirements of the Michigan program that may be more stringent than the analogous requirements of the Federal program. As a consequence, regulated handlers facing an apparent conflict between State and Federal land disposal prohibitions must always comply with the more stringent of the two requirements.

D. Decision

I conclude that Michigan's program revision application meets all the statutory and regulatory requirements established by RCRA and its amendments. Accordingly, EPA grants Michigan final authorization to operate its hazardous waste program as revised. Michigan now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program and its amendments. This responsibility is subject to the limitations of its program revision applications and previously approved authorities. Michigan also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under section 3008, 3013, and 7003 of RCRA.

E. Codification

EPA codifies authorized State programs in part 272 of 40 CFR. The purpose of codification is to provide notice to the public of the scope of the authorized program in each State. Codification of these revisions to the Michigan program will be completed at a later date.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant

economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Michigan's program thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a) 3006, and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926 and 6974(b).

Dated: February 7, 1991.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 91-9488 Filed 4-22-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6850

[AZ-930-01-4214-10; A-23595]

Withdrawal of Mineral Estate, Leslie Canyon National Wildlife Refuge; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws, for a period of 20 years, the 1,141.68 acres of Federal mineral estate underlying the Leslie Canyon National Wildlife Refuge located in Cochise County, Arizona. The U.S. Fish and Wildlife Service purchased the surface estate from The Nature Conservancy with Land and Water Conservation Funds in 1988. The mineral estate is and always has been in Federal ownership. This action will close the area to entry under the mining laws only; it has been and will remain open to surface uses allowable within wildlife refuges and to mineral leasing.

EFFECTIVE DATE: April 23, 1991.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602-640-5509.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described mineral estate is hereby withdrawn from entry and location under the mining laws (30 U.S.C. ch. 2), to ensure the protection of two endangered fish species and the associated riparian habitat.

Gila and Salt River Meridian

Leslie Canyon National Wildlife Refuge

T. 21 S., R. 28 E.,
- Sec. 17, That portion of the SW¼ lying SW of a diagonal line running from the W¼ corner to the S¼ corner of said section;
- Sec. 20, N½, SE¼;
- Sec. 21, lots 3, 4, and 5;
- Sec. 28, NW¼, N½SW¼ and that portion of the NW¼SE¼ lying SW of a diagonal line which runs from the center one-quarter corner to the SE one-sixteenth corner of said section;
- Sec. 29, E½E½, NW¼NE¼.

The area described contains 1,141.68 acres of Federal mineral estate underlying the Leslie Canyon National Wildlife Refuge in Cochise County.

2. The withdrawal made by this order does not alter the applicability of these land laws governing the use of National Wildlife Refuge land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date, pursuant to section 204 (f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (f), the Secretary determines that the withdrawal shall be extended.

Dated: April 18, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-9517 Filed 4-22-91; 8:45 am]

BILLING CODE 4310-32-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 64 and 68

[CC Docket No. 90-313; FCC 91-116]

Common Carriers; Operator Service Providers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: These final regulations establish policies and standards for the provision of operator services and implement provisions of the Telephone Operator Consumer Services Improvement Act of 1990, Public Law No. 101-435, 104 Stat. 986 (1990) (to be codified at 47 U.S.C. 226). These regulations will provide consumers with the opportunity to make informed choices when using operator services and to freely reach their desired carriers.

EFFECTIVE DATE: May 23, 1991.

FOR FURTHER INFORMATION CONTACT: Sally J. Novak, Enforcement Division, Common Carrier Bureau, (202) 632-4887.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in CC Docket No. 90-313 (FCC 91-116), adopted April 9, 1991 and released April 15, 1991. The full text of the Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street, NW., Washington, DC. The full text of this Report and Order may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422.

Summary of Report and Order

I. Background

1. On April 9, 1991, the Commission adopted a Report and Order in CC Docket No. 90-313 (released April 15, 1991, FCC 91-116) in order to establish policies and standards for the provision of operator services and to adopt rules necessitated by the Telephone Operator Consumer Services Improvement Act of 1990, Pub. L. No. 101-435, 104 Stat. 986 (1990) (to be codified at 47 U.S.C. 226) ("Operator Services Act" or "Act").

2. On June 14, 1990, the Commission adopted the initial Notice of Proposed Rule Making in CC Docket No. 90-313, 55 FR 29639 (1990) (NPRM). In the NPRM, the Commission proposed specific rules aimed at solving problems in the operator services industry that have persisted despite previous

Commission action. During the first week of October 1990, Congress passed the Operator Services Act, which the President signed into law shortly thereafter. Under the Act, the Commission must, *inter alia*, conduct a "general" rule making proceeding to prescribe regulations that will implement statutory provisions and establish certain standards and policies, and a monitoring/reporting proceeding that will ultimately result in three reports to Congress. On December 21, 1990, the Commission released a Further Notice of Proposed Rule Making, 56 FR 402 (1991) (FNPRM) in order to: (1) "Initiate" the general rule making and monitoring/reporting proceedings required by the Act; (2) propose the required rules; (3) invite any additional comments that were necessary beyond those submitted in response to the NPRM; (4) solicit the information that must be examined in the monitoring/reporting proceeding; and (5) declare that, under the Act, the access and payphone compensation issues must be considered in a separate proceeding. The rules proposed in the FNPRM supplanted those proposed in the initial NPRM.

3. The Report and Order delegates to the Chief of the Common Carrier Bureau authority to impose such reporting requirements as are necessary to fulfill the monitoring/reporting obligations mandated by section 226(h)(3)(B) of the Act, 47 U.S.C. 226(h)(3)(B). The monitoring/reporting proceeding was initiated as Phase II of CC Docket No. 90–313.

4. In response to the NPRM and FNPRM over 450 parties filed comments and reply comments. The Commission is required by the Act to adopt the rules required in the general rulemaking by May 15, 1991.

II. Discussion

5. The majority of commenters agreed with the rules as proposed by the Commission in the FNPRM. With the exception of rules for which clarification or modification was requested, the Commission is adopting those rules as proposed and without discussion.[1]

[1] The rules requiring OSPs to ensure aggregators' compliance by contract or tariff with certain requirements were unopposed. *See* § 64.703(e) (posting requirements), § 64.704(b)(1) (call blocking), and § 64.705(a)(5) (charges for access code calls). Commenters did not request clarification with respect to the majority of definitions proposed in § 64.708, specifically, subsections (a), (c), (d), (f), and (h). Section 64.704(a), which requires that "800" and "950" access be unblocked, was supported by the commenters.

A. Definitions

6. Section 64.708 of the rules defines a number of fundamental terms. The Commission is adopting the definitions contained in § 64.708 of the rules with some clarification and modification.

7. The Commission is adopting § 64.708(b) of the rules, the definition of "aggregator," with some clarification. An "aggregator" has certain enumerated responsibilities under the Act and the Commission's rules, among them posting the required information on or near the telephone and ensuring that its telephones do not block "800" or "950" access. The Commission believes that the "aggregator" is the entity that is in the position to comply with these requirements through its access to and control of the telephone equipment, a determination that must be based on the facts of each situations. Congress has made clear that pay telephone owners, hotels, and other premises owners may be aggregators under the Act. Therefore, a blanket determination by the Commission regarding who the aggregator is with regard to all payphones will not help to meet the Commission's goals of ensuring the availability of consumer information and consumer choice. Instead, the Commission will interpret the definitions broadly enough to ensure compliance with the goals of the Commission's rules and the Act. Each entity that exercises control over telephone equipment, whether through ownership of the equipment, control of access to the equipment, or some other means, will be responsible as an "aggregator" under the Act and the Commission's rules. In some situations, the premises owner and the pay telephone owner will be jointly responsible as "aggregators" by virtue of their joint access to and control over the telephone equipment; in some situations the "provider of operator services" will also be an "aggregator" who must comply with the provisions of the Act and the Commission's rules. In order to remove any ambiguity and to avoid debate over who is responsible for ensuring compliance with the Act and the Commission's rules, joint aggregators will be equally responsible for complying with the Act and the rules.

8. The Commission concludes that the definition of "aggregator" does not apply to correctional institutions in situations in which they provide inmate-only phones. The Commission is persuaded that the provision of such phones to inmates presents an exceptional set of circumstances that warrants their exclusion from the regulation being considered herein. Accordingly, inmate-only phones at correctional institutions will not be subject to any requirements under the Act or the Commission's rules.[2] Phones provided for the use of the public, however, such as those in visitation areas, would be covered by the Operator Services Act and the rules.

9. The Commission also finds that hospitals and universities are clearly within the scope of the definition of "aggregator." In discussing the definition, the Senate Committee said that "[a]ggregators include hotels and motels, hospitals, universities, airports, gas stations, pay telephone owners, and others. S. Rep. No. 439, 101st Cong., 2d Sess. 10 (1990).

10. The Commission is not persuaded that federal executive agencies (FEA) should be excluded from the definition of "aggregator." The Commission has previously found that governmental entities are subject to its jurisdiction. Graphnet Systems, Inc., 73 FCC 2d 283 (1979) (finding that the United States Postal Service was not exempt from Commission jurisdiction due to its status as a governmental entity). First, the Communications Act has conferred upon the Commission broad and expansive regulatory authority over interstate communications by wire and radio. Second, while the term "person" in the Communications Act is defined to include certain entities, there is no indication that the list is all-inclusive and that entities not specifically mentioned are to be excluded. Finally, when Congress has sought to exclude governmental entities from the Commission's jurisdiction they have done so explicitly.[3] The Commission

[2] Additionally, the carrier providing service to inmate-only phones at correctional institutions would not fall under the definition of "provider of operator services" as such service is not provided at an "aggregator" location with respect to inmate-only phones. A carrier that provides service to phones at correctional institutions that are made available to the public or to transient users would have to comply with the requirements of the Commission's rules and the Operator Services Act.

[3] For example, radio stations operated by the United States are excluded from regulation under title III of the Communications Act. The FEA, however, points to the explicit inclusion of "governmental entities" within a definition of person included in the Cable Franchise Policy and Communications Act of 1984, Public Law No. 98–549, 98 Stat. 2779 (Title VI of the Communications Act) as dispositive with regard to the issue of jurisdiction over "governmental entities." The FEA contends that when Congress wants to include governmental entities within the Commission's jurisdiction, they do so explicity. There is no merit to this argument as the definition of "person" in title VI of the Communications Act is for the purposes of title VI specifically and was not meant to limit generally the definition of "person" in title I. The

Continued

also notes that the legislative intent of Congress would be frustrated by excluding "governmental entities" from regulation under the Operator Services Act and the rules. Hence, to the extent such agencies make phones available to the public or to transient users for the placing of operator-assisted interstate telephone calls, they clearly provide the type of service contemplated by the Operator Services Act and therefore come within the statutory requirements of the Act and under the Commission's rules.

11. Those sections of the rules defining "operator services" and "providers of operator services," sections 64.708 (g) and (i) respectively, will be adopted as proposed. The legislative history of the Operator Services Act states that "operator services" include

> Interstate telecommunications services that involve any assistance to a consumer to arrange for billing other than to the number from which the call was placed. This definition includes assistance provided either by a "live" person or by automation, such as voice recordings or "bong-in-a-box" services. Carriers may not escape this definition by employing a particular technology that does not involve a "live" operator.

S. Rep. No. 439, 101st Cong., 2d Sess. 11 (1990). Clearly, Congress intended that automated technologies be included within the definition of "operator services" and that those who provide service through such automated technologies are "providers of operator services" under the Act and the Commission's rules. The Commission emphasizes that "store-and-forward" and "bong-in-the-box" as well as other automated technologies do not fall within the exemption to the definition of "operator services" found in § 64.708(g)(1) of the rules. Further, the Commission is not persuaded that a distinction should be drawn between automated billing provided by a hotel vis-a-vis similar services provided by entities that offer such services as their primary business. Hotels providing automated billing fall within the definition of "provider of operator services" and must comply with the Act and the Commission's rules.

12. Consistent with the Act, the Commission is modifying § 64.708(e), the definition of "equal access," to reflect the inclusion of only those orders amending the Modification of Final Judgment (MFJ) issued prior to October 17, 1990 rather than inclusion of those orders modifying the MFJ issued prior to the effective date of the rule. The Commission is adopting the remainder of the definitions in § 64.708 as proposed.

B. Consumer Information

1. Requirements for Operator Service Providers (OSPs)

13. The Commission is adopting without modification § 64.703(a) of the rules that requires OSPs to brand calls, to allow consumers to terminate calls before connection without incurring a charge, and to disclose information about rates and charges without charge upon consumer request. These requirements apply to both "live" operators and automated technologies. With regard to the branding requirement in § 64.703(a)(1), the first brand must occur "at the beginning of the call." See 47 U.S.C. 226(b)(1)(A). The Commission does not believe that a brand after a consumer has entered a billing number and that number has been validated is "at the beginning of the call." For automated systems, the Commission requires that the first brand occur prior to the bong tone, since the bong tone usually signals callers to begin entering a billing number. This requirement will help ensure that consumers hear all of the branding information and have the opportunity to make an informed choice to use a particular OSP.

14. The Commission will not prohibit parties involved in rate-setting from deciding which party will be named in the brand. The Commission will, however, prohibit parties from branding in the name of another party if rates are merely modeled on or copied from that party's rates and that party has not consented to the use of its name in the brand.

15. Finally, with regard to automated technologies only, the Commission believes the provision of rate and other information via the use of a separate toll-free number is a reasonable method of compliance with the Commission's rule. As technology is developed that eliminates the necessity for a separate number, however, the use of that number should also be eliminated. The Commission clarifies that any rates quoted by an OSP must be exact rather than approximate. The Operator Services Act is clear that quotes for rates or charges must be for "the call" (see 47 U.S.C. 226(b)(1)(C)(i)) not for some hypothetical call. Rates should be quoted based on the pricing of the specific call.

2. Aggregator Posting Requirements and State Requirements

16. The Commission is adopting as proposed § 64.703(b) that requires aggregators to post certain information on or near telephones in plain view of consumers and § 64.703(d) that provides that the posting requirement will not apply if state law or regulation requires an aggregator to take actions that are substantially the same as the requirements of § 64.703(b). The Commission finds that all aggregator telephones, including those in non-equal access areas, are subject to the posting requirements.

17. The Commission clarifies that the required information must be posted on or near all aggregator telephones. For example, it is not sufficient that the required information is posted on or near only one telephone in a hotel suite or room with more than one telephone. Further, it is not sufficient that tent cards or stickers on or near a telephone merely refer the consumer to another source of information such as a pamphlet or hand-out that is not itself within plain view of the consumer.

18. The posting requirement adopted in these rules is a minimum standard. State requirements that include all the information required by the Commission's rule, though the wording may be different, will be "substantially the same," as comtemplated in § 64.703(d) of the rules. Aggregators are responsible for complying with the Act and the Commission's rules. Aggregators are also responsible for reviewing and complying with any additional state requirements, where they exist.

3. Double Branding

19. The Act mandates that OSPs double brand for the three-year period commencing 90 days after its enactment. *See* 47 U.S.C. 226(b)(2). The rule as proposed required that OSPs double brand for three years from the effective date of the rules. The Commission is modifying § 64.703(c) of the rules to provide that OSPs must double brand through January 14, 1994 in conformance with the Act. This rule applies to all OSPs regardless of size and to all calls including collect calls.

C. Prohibition on Call Blocking

20. The Commission is adopting § 64.704(a) and § 64.704(b) as proposed. Section 64.704(a) of the rules requires that aggregators not block "800" and "950" access at phones presubscribed to an OSP. Section 64.704(b) requires that OSPs withhold compensation on a location-by-location basis from

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fact that Congress has explicitly confirmed that a government entity is a "person" under title VI does not mean a governmental entity is not also a person under the title I definition.

aggregators reasonably believed to be blocking such access.

21. The Commission will not provide notice of blocking to an OSP before the OSP is required to withhold compensation from an aggregator nor will the Commission compile for public dissemination listings of aggregators who purportedly block. The purpose of this rule is to provide additional incentive to OSPs to ensure that aggregators do not block "800" and "950" access. The Commission expects that OSPs will take steps necessary to ensure such compliance.

22. The Commission will make appropriate use of its forfeiture authority against offending OSPs and aggregators. Under section 503 of the Communications Act, 47 U.S.C. 503, the Commission can impose substantial forfeitures for willful or repeated violations of the Communications Act or its rules, regulations, or orders: For common carriers subject to the Communications Act, up to $100,000 for each violation or each day of a continuing violation, up to a total of $1,000,000 for a continuing violation; and for others, up to $10,000 for each violation or day of a continuing violation up to a total of $75,000 for continuous violation. This Commission will not hesitate to use its forfeiture authority against violators of its rules.

D. Restrictions on Charges

23. The Commission is adopting § 64.705 of the rules as proposed. Section 64.705 imposes restrictions on billing for unanswered calls, call splashing, and surcharges for using a carrier other than the presubscribed OSP. OSPs in equal access areas are prohibited from billing for unanswered calls. The rule clearly recognizes, however, that answer supervision is not available in non-equal access areas and requires that OSPs not 'knowingly' bill for unanswered calls in non-equal access areas. Providers of automated message delivery services (AMDS), may bill for the provision of AMDS, but a provider of AMDS may not bill for the initial call when it is unanswered as provided for in § 64.705.

24. The prohibition on splashing unless the consumer is informed and consents strikes the appropriate balance in protecting consumers from being billed for calls that do not reflect their originating points and allowing consumers to make an informed decision to have calls splashed. Finally, by prohibiting aggregators from imposing surcharges on access code calls that are not charged for calls using the presubscribed OSPs, the Commission further ensures that consumers have the ability to choose their preferred carrier in a competitive marketplace.

E. Emergency Calls

25. The Commission is adopting with modifications § 64.706 of the rules that establishes minimum standards for the handling of emergency calls by OSPs. The Commission reiterates that the subject of emergency calls is an area that the Commission has traditionally left to the states and stresses that the Commission is adopting a minimum standard that is not intended to preempt state requirements. The Commission notes that this standard applies to "store-and-forward," "bong-in-a-box," and other automated technologies.

26. The Commission is modifying the rule to require that, in instances where the originating call location is different from the site of the emergency and the site of the emergency is known, the call be connected to the appropriate emergency service for the reported site of the emergency. The Commission requires OSPs (i) to immediately connect an emergency call (ii) to the emergency service provider that responds to the type of reported emergency (iii) at the site of the emergency, if known, or, if not known, to the originating location of the emergency call.

27. The Commission is also modifying the rule to exclude specific examples of dialing sequences that might initiate an emergency call. All emergency calls, no matter how initiated, are covered by the Commission's rules.

F. Public Dissemination of Information

28. The Commission is adopting Section 64.707 of the rules as proposed. The Act requires that the Commission "establish a policy for requiring providers of operator services to make public information about recent changes in operator services and choices available to consumers in that market." 47 U.S.C. 226(d)(4)(B). In order that consumers are aware of changes in the marketplace, the Commission believes it is necessary for each OSP to provide information not only about itself, but also about the market within which it is providing service. Accordingly, OSPs will be required to disseminate information, upon request, that describes their own services, recent changes in those services, and services and trends in the industry as a whole. Detailed descriptions of rates, charges, and offerings of competitors were never contemplated by the Commission. Rather, the Commission expects OSPs to make available generic descriptions of any recent changes or innovations in operator services. The Commission believes such descriptions may be done in a fashion that complies with other applicable legal requirements.[4]

29. The Commission is not adopting an exception for smaller OSPs. Consumers using even the smallest OSPs have the right to request and receive information regarding that OSP's own rates and services as well as general information regarding the operator services market.

G. Equipment Capabilities

30. The Commission is adopting § 68.318(d) of the rules as proposed. The Act mandates that aggregator software and equipment manufactured or imported on or after April 17, 1992, be technologically capable of providing access to OSPs via equal access codes. 47 U.S.C. 226(f). The Commission is limiting the equipment capabilities requirement to 10XXX capability for the 1992 deadline. The Commission expects aggregator equipment that is the subject of the rule to be technologically capable of providing access via the 10XXX access code. The Commission will address issues relating to fraud and unblocking of the 10XXX access code in a separate proceeding.[5]

III. Final Regulatory Flexibility Analyis

31. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

32. Need and purpose of this action. This Report and Order adopts regulations to implement the Telephone Operator Consumer Services Improvement Act of 1990, Public Law No. 101–435, 104 Stat. 986 (1990). The adopted rules are intended to protect consumers from unfair and deceptive practices related to their use of operator services to place interstate telephone calls and to ensure that consumers have the opportunity to make informed choices in making such calls.

33. Summary of the issues raised by the public comments in response to the Initial and Further Initial Regulatory Flexibility Analysis. There were no comments submitted in response to the Initial or Further Regulatory Flexibility

[4] With respect to the argument made by a commenter that the requirement would violate the information services restriction of the MFJ, the Commission notes that matters requiring interpretation of the MFJ are properly within the jurisdiction of the district court. *See* NYSMSA Limited Partnership, 58 RR 2d 525, 530 (1985). However, since no use of transmission capability would be required to comply with the Act, it is unclear how the MFJ is implicated.

[5] Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Notice of Proposed Rule Making, CC Docket No. 91–35, FCC 91–53, 56 FR 11136 (1991).

Analyses that are relevant to the rules adopted herein.

34. Significant alternatives considered and rejected. The Notice of Proposed Rule Making (NPRM) and Further Notice of Proposed Rule Making (FNPRM) in this proceeding offered many proposals. The commenters supported the basic thrust of this proceeding, with many suggesting modifications to the Commission's proposals. The Commission considered all of the alternatives presented in the proceeding and considered all of the timely filed comments directed to the various issues in the NPRM and FNPRM. After carefully weighing all aspects of the issues and comments in this proceeding, the Commission has taken the most reasonable course of action under the mandate of the Operator Services Act.

IV. Ordering Clauses

35. Accordingly, *It is ordered*, pursuant to sections 1, 4(i), 4(j), 201–205, 226, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 226, 303(r), that parts 64 and 68 of the Commission's Rules, 47 CFR parts 64 and 68, are amended as set forth in Rule Changes below.

36. *It is Further ordered* That this Report and Order will be effective thirty (30) days after publication in the **Federal Register**.

List of Subjects

47 CFR Part 64

Communications common carriers, Computer technology, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

47 CFR Part 68

Administrative practice and procedure, Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Parts 64 and 68 of title 47 of the Code of Federal Regulations are amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 is revised to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended, 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 48 Stat. 1070, as amended, 1077, 47 U.S.C. 201, 218, 226, unless otherwise noted.

2. A new § 64.703 is added to subpart G to read as follows:

§ 64.703 Consumer information.

(a) Each provider of operator services shall:

(1) Identify itself, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call;

(2) Permit the consumer to terminate the telephone call at no charge before the call is connected; and

(3) Disclose immediately to the consumer, upon request and at no charge to the consumer—

(i) A quotation of its rates or charges for the call;

(ii) The methods by which such rates or charges will be collected; and

(iii) The methods by which complaints concerning such rates, charges, or collection practices will be resolved.

(b) Each aggregator shall post on or near the telephone instrument, in plain view of consumers:

(1) The name, address, and toll-free telephone number of the provider of operator services;

(2) A written disclosure that the rates for all operator-assisted calls are available on request, and that consumers have a right to obtain access to the intestate common carrier of their choice and may contact their preferred interstate common carriers for information on accessing that carrier's service using that telephone; and

(3) The name and address of the Enforcement Division of the Common Carrier Bureau of the Commission (FCC, Enforcement Division, CCB, room 6202, Washington, DC 20554), to which the consumer may direct complaints regarding operator services.

(c) *Additional requirements for first 3 years.* In addition to meeting the requirements of paragraph (a) of this section, each presubscribed provider of operator services shall, until January 15, 1994, identify itself audibly and distinctly to the consumer, not only as required in paragraph (a)(1) of this section, but also for a second time before connecting the call and before the consumer incurs any charge.

(d) *Effect of state law or regulation.* The requirements of paragraph (b) of this section shall not apply to an aggregator in any case in which State law or State regulation requires the aggregator to take actions that are substantially the same as those required in paragraph (b) of this section.

(e) Each provider of operator services shall ensure, by contract or tariff, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the requirements of paragraph (b) of this section.

3. A new § 64.704 is added to subpart G to read as follows:

§ 64.704 Call blocking prohibited.

(a) Each aggregator shall ensure that each of its telephones presubscribed to a provider of operator services allows the consumer to use "800" and "950" access code numbers to obtain access to the provider of operator services desired by the consumer.

(b) Each provider of operator services shall:

(1) Ensure, by contract or tariff, that each aggregator for which such provider is the presubscriber provider of operator services is in compliance with the requirements of paragraph (a) of this section; and

(2) Withhold payment (on a location-by-location basis) of any compensation, including commissions, to aggregators if such provider reasonably believes that the aggregator is blocking access to interstate common carriers in violation of paragraph (a) of this section.

4. A new § 64.705 is added to subpart G to read as follows:

§ 64.705 Restrictions on charges related to the provision of operator services.

(a) A provider of operator services shall:

(1) Not bill for unanswered telephone calls in areas where equal access is available;

(2) Not knowingly bill for unanswered telephone calls where equal access is not available;

(3) Not engage in call splashing, unless the consumer requests to be transferred to another provider of operator services, the consumer is informed prior to incurring any charges that the rates for the call may not reflect the rates from the actual originating location of the call, and the consumer then consents to be transferred;

(4) Except as provided in paragraph (a)(3) of this section, not bill for a call that does not reflect the location of the origination of the call; and

(5) Ensure, by contract or tariff, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the requirements of paragraph (b) of this section.

(b) An aggregator shall ensure that no charge by the aggregator to the consumer for using an "800" or "950" access code number, or any other access code number, is greater than the amount the aggregator charges for calls placed

using the presubscribed provider of operator services.

5. A new § 64.706 is added to subpart G to read as follows:

§ 64.706 Minimum standards for the routing and handling of emergency telephone calls.

Upon receipt of any emergency telephone call, a provider of operator services shall immediately connect the call to the appropriate emergency service of the reported location of the emergency, if known, and, if not known, of the originating location of the call.

6. A new § 64.707 is added to subpart G to read as follows:

§ 64.707 Public dissemination of information by providers of operator services.

Providers of operator services shall regularly publish and make available at no cost to inquiring consumers written materials that describe any recent changes in operator services and in the choices available to consumers in that market.

7. A new § 64.708 is added to subpart G to read as follows:

§ 64.708 Definitions.

As used in §§ 64.703 through 64.707 of this part and § 68.318 of this chapter (47 CFR 64.703–64.707, 68.318):

(a) *Access code* means a sequence of numbers that, when dialed, connect the caller to the provider of operator services associated with that sequence;

(b) *Aggregator* means any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services;

(c) *Call splashing* means the transfer of a telephone call from one provider of operator services to another such provider in such a manner that the subsequent provider is unable or unwilling to determine the location of the origination of the call and, because of such inability or unwillingness, is prevented from billing the call on the basis of such location;

(d) *Consumer* means a person initiating any interstate telephone call using operator services;

(e) *Equal access* has the meaning given that term in Appendix B of the Modification of Final Judgment entered by the United States District Court on August 24, 1982, in *United States* v. *Western Electric,* Civil Action No. 82–0192 (D.D.C. 1982), as amended by the Court in its orders issued prior to October 17, 1990;

(f) *Equal access code* means an access code that allows the public to obtain an equal access connection to the carrier associated with that code;

(g) *Operator services* means any interstate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call through a method other than:

(1) Automatic completion with billing to the telephone from which the call originated; or

(2) Completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer;

(h) *Presubscribed provider of operator services* means the interstate provider of operator services to which the consumer is connected when the consumer places a call using a operator services without dialing an access code;

(i) *Provider of operator services* means any common carrier that provides operator services or any other person determined by the Commission to be providing operator services.

PART 68—[AMENDED]

1. The authority citation for part 68 is revised to read as follows:

Authority: Secs. 4, 201, 202, 203, 204, 205, 208, 215, 218, 226, 313, 314, 403, 404, 410, 602, 48 Stat., as amended, 1066, 1070, 1071, 1072, 1073, 1076, 1077, 1087, 1094, 1098, 1102, 47 U.S.C. 154, 201, 202, 203, 204, 205, 208, 215, 218, 226, 313, 314, 403, 404, 410, 602, unless otherwise noted.

2. Section 68.318 is amended by adding paragraph (d) to read as follows:

§ 68.318 Additional limitations.

* * * * *

(d) *Requirement that registered equipment allow access to common carriers.* Any equipment or software manufactured or imported on or after April 17, 1992, and installed by any aggregator shall be technologically capable of providing consumers with access to interstate providers of operator services through the use of equal access codes. The terms used in this paragraph shall have the meanings defined in § 64.708 of this chapter (47 CFR 64.708).

[FR Doc. 91–9349 Filed 4–22–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 87

[FCC 91–94]

Aviation Services; Rules To Provide Additional Air-to-Air Frequencies for Use In and Around the Grand Canyon Area

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has decided to provide additional air-to-air frequencies for use in and around the Grand Canyon area. This action was taken in response to a request by the Federal Aviation Administration (FAA) to permit air-to-air communications between all types of aircraft on VHF frequencies. This action will improve air safety communications capability in the Grand Canyon vicinity.

EFFECTIVE DATE: April 23, 1991.

FOR FURTHER INFORMATION CONTACT: J. Joy Alford, Aviation & Marine Branch, Private Radio Bureau, (202) 632–7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order,* adopted March 25, 1991 and released April 10, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1114 21st Street, NW., Washington, DC, 20036.

Summary of Order

1. On May 9, 1989, in response to a request by the Federal Aviation Administration (FAA), the Commission adopted an *Order,* 4 FCC Rcd 4110 (1989), to permit air-to-air communications between all types of aircraft on VHF frequencies 121.950 MHz, 122.750 MHz and 122.850 MHz in the vicinity of the Grand Canyon National Park in Arizona. This action was taken to improve air safety communications capability in the Grand Canyon vicinity. Because of congestion caused by high altitude traffic on 122.750 MHz, the FAA requested additional changes to frequency assignments in the Grand Canyon vicinity to further improve air flight safety. To relieve the problem, the FAA, on a trial basis, authorized the use of two frequencies

from its pool of air traffic control frequencies, 120.650 MHz and 127.050 MHz, for use in the Grand Canyon area. These frequencies have proven to be of great value in enhancing air safety.

2. We concur with the FAA that amending the Commission's Rules to replace the frequency 122.750 MHz with 127.050 MHz for use as an air-to-air frequency in the Grand Canyon Park and to assign exclusive use of 120.650 MHz as an air-to-air frequency in the corridor between the Grand Canyon and Las Vegas will enhance safety by providing improved air-to-air communications. These frequencies have been in use in the area since March, 1990. No adverse comments concerning the use of these frequencies have been received by the Commission or by the FAA. Due to the remoteness of the region, no other potential user should be affected by these changes. For these reasons, we are amending the rules to implement the use of these frequencies as requested by the FAA in the Grand Canyon area.

Procedural Matters

3. This amendment has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 and found to impose no new or modified form, information collection and/or record keeping, labeling, disclosure, or retention requirements, and will not increase or decrease burden hours imposed on the public.

4. This rule amendment provides for the replacement of one of three air-to-air frequencies in the Grand Canyon area and the addition of a new air-to-air frequency for a VFR flight corridor between the Grand Canyon and Las Vegas. The frequencies have been in continuous use since March, 1990, and come from the FAA's pool of air traffic control frequencies. No complaints or adverse comments have been received concerning this use. This change is non-controversial and therefore constitutes a minor amendment to the rules in which the public is not likely to be interested. Therefore, we find for good cause that compliance with the notice and comment procedure of the Administrative Procedure Act is unnecessary. See 5 U.S.C. 553(b)(3)(B). In addition, because this amendment will promote increased safety in the aviation service, we find good cause to amend the rules effective immediately. Therefore, this rule amendment will be effective upon publication in the **Federal Register**. See 5 U.S.C. § 553(d).

Ordering Clauses

5. Accordingly, *It is Ordered* That, under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), part 87 of the Commission's Rules *Is Amended* as set forth below, effective upon publication in the **Federal Register**.

Lists of Subjects in 47 CFR Part 87

Aviation services, Aircraft, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Final Rules

Part 87 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 87—AVIATION SERVICES

1. The authority citation for part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

2. In Section 87.187, paragraph (z) is revised and a new paragraph (aa) is added to read as follows:

§ 87.187 Frequencies.

* * * * *

(z) The frequencies 121.950 MHz, 122.850 MHz, and 127.050 [1] MHz are authorized for air-to-air use for aircraft up to and including 10,000 feet mean sea level in the vicinity of Grand Canyon National Park in Arizona within the area bounded by the following coordinates:

36–28–00 N. Lat; 112–47–00 W. Long.
36–28–00 N. Lat; 112–48–00 W. Long.
35–50–00 N. Lat; 112–48–00 W. Long.
35–43–00 N. Lat; 112–47–00 W. Long.

(aa) The frequency 120.650 [1] MHz is authorized for air-to-air use for aircraft up to and including 10,000 feet mean sea level within the area bounded by the following coordinates:

35–59–45 N. Lat; 114–51–45 W. Long.
36–09–30 N. Lat; 114–50–00 W. Long.
36–09–30 N. Lat; 114–02–55 W. Long.
35–54–45 N. Lat; 113–48–45 W. Long.
35–54–45 N. Lat; 114–41–45 W. Long.

[FR Doc. 91–8871 Filed 4–22–91; 8:45 am]
BILLING CODE 6712–01–M

[1] Until further notice this frequency is available for air-to-air use as described in the Grand Canyon vicinity. Availability is a result of the FAA's assignment of this frequency. If the FAA reassigns this frequency the Commission may require air-to-air use to cease.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[Ost Docket No. 1; Amdt. 1–242]

Organization and Delegation of Powers and Duties

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule amends the regulations by (1) amending the delegation of authority to the Administrators of the Department of Transportation's operating administrations to carry out the emergency preparedness functions assigned to the Secretary of Transportation; and (2) amending certain emergency preparedness functions with respect to civil transportation services delegated to the Administrator of Research and Special Programs Administration (RSPA). This rule reflects emergency preparedness responsibilities under Executive Order 12656 of November 18, 1988, and Executive Order 12742 of January 8, 1991.

EFFECTIVE DATE: April 23, 1991.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Assistant Chief Counsel, Hazardous Materials Safety & Research and Technology Law Division, DCC–10, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone number (202) 366–4400, or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement, C–50, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone number (202) 366–9307.

SUPPLEMENTARY INFORMATION: Executive Order 12656 replaced Executive Order 11490, as amended by Executive Order 11921. Executive Order 12656 assigns emergency preparedness responsibilities to Federal agencies. Section 1.45(a)(5) of this rule reflects this change. Executive Order 12742 was signed on January 8, 1991. This Executive Order delegated additional emergency preparedness functions to the Secretary of Transportation with respect to civil transportation. This rule redelegates that authority to the Administrator of RSPA. Section 1.53(e) adds this Executive Order to reflect the additional emergency preparedness authority.

Since these amendments relate to Departmental management, notice and public comment are unnecessary. For

the same reason, good cause exists for not publishing this rule at least thirty (30) days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). Therefore, this rule is effective on the date of publication in the **Federal Register.**

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

§ 1.45 [Amended]

2. Section 1.45(a)(5) is amended by removing the words "Executive Order 11490, as amended and by Executive Order 11921" and adding, in their place, the words "Executive Order 12656".

§ 1.53 [Amended]

3. Section 1.53(e) is amended by adding the words "Executive Order 12742;" after the words "Executive Order 12656;".

Issued on: April 11, 1991.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 91-9244 Filed 4-22-91; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89-18; Notice 4]

RIN 2127-AC38

Federal Motor Vehicle Safety Standards; Glazing Materials

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends Standard No. 205, *Glazing Materials*, to permit three new items of glass-plastic glazing. Item 15A, Annealed glass-plastic glazing, is permitted to be used anywhere in a motor vehicle except the windshield. Item 16A, Annealed glass-plastic glazing, and Item 16B, Tempered glass-plastic glazing, may be used in areas not requisite for driving visibility. The agency believes that the addition of these three new types of glazing to Standard No. 205 will facilitate use of glass-plastic glazing in all glazing locations in a motor vehicle. The agency encourages greater use of glass-plastic glazing because of its proven injury-reduction capabilities in crashes. This notice also makes certain technical changes to Standard No. 205.

A supplementary notice of proposed rulemaking (SNPRM) to amend Standard No. 205, published elsewhere in today's edition of the **Federal Register**, proposes to permit a new Item 15B, Tempered glass-plastic glazing, for all areas requisite for driving visibility except the windshield. The SNPRM also requests further public comments, especially data, on the question of deleting Test No. 1, for Item 3 glazing.

DATES: The amendments in this rule are effective May 23, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of May 23, 1991. Any petitions for reconsideration of this rule must be received by NHTSA no later than May 23, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Clarke Harper, Office of Vehicle Safety Standards, NRM-12, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW. Washington, DC 20590. Mr. Harper's telephone number is (202) 366-2264.

SUPPLEMENTARY INFORMATION:

I. Background

Federal Motor Vehicle Safety Standard No. 205, *Glazing Materials* (49 CFR 571.205), specified performance requirements for the types of glazing that may be used in motor vehicles. It also specifies the vehicle locations in which the various types of glazing may be used. The standard incorporates, by reference, American Standard Institute (ANSI) Standard Z26.1, "Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," as amended through 1980 (ANS Z26). The requirements in ANS Z26 are specified in terms of performance tests that the various types of "items" of glazing must pass. There are 14 "items" of glazing for which requirements are currently specified in Standard No. 205.

To ensure the safety performance of vehicle glazing, Standard No. 205 includes a total of 32 specific tests. Each item of glazing is subjected to a selected group of these tests appropriate for that material. It is the particular combination of tests that dictates the requisite properties of a particular item of glazing, and where in a motor vehicle it may be used. For example, three-ply laminated windshield glazing, Item 1, usable anywhere in a vehicle including the windshield, is subjected to 9 tests.

Item 14 (glass-plastic glazing) was added to Standard No. 205 by NHTSA in 1983 (48 FR 52061), without limitation as to the location of its use in a motor vehicle. Item 14 glazing was anticipated to be used primarily in vehicle windshields. In adding Item 14, the agency anticipated that this type of glazing would consist of laminated glass to which a plastic layer was added on the inside surface, facing the interior of the vehicle.

Although there are currently no items of glass-plastic glazing allowed only in areas other than the windshield, there are two main types of nonglass-plastic glazing allowed for use in these areas. Item 2 glazing may be used anywhere in a motor vehicle except windshields. The windows to the left and right of the driver in all vehicles and rearward windows in passenger cars can be made of Item 2 glazing. Item 3 glazing may be used anywhere in a motor vehicle except windshields and other areas requisite for driving visibility. Item 3 is used as side-facing rearward windows of light trucks, vans, and multipurpose passenger vehicles and also for sun roofs and T-tops. Both items 2 and 3 may be manufactured in one of four types of construction: laminated glass, tempered glass, and 2 classes of multiple glazing units. The primary difference between Item 2 and Item 3 glazing is that Item 3 is not subject to any luminous transmittance requirements.

The agency granted a petition from the Taliq Corporation (petitioner) requesting that the agency amend Standard No. 205 by creating a category of glass-plastic glazing without the visibility requirements or the stringent anti-penetration requirements applicable to Item 14. In the notice of proposed rulemaking (54 FR 41632; October 11, 1989) that was subsequently issued, the agency proposed to permit three new items of glass-plastic glazing. The new glass-plastic designation as Item 15, annealed glass-plastic, would meet the same requirements as Item 2, with the addition of requirements applicable to plastics. The agency proposed that the new Item 15 be permitted for use in the locations specified for Item 2, that is, in all locations except for the windshield. The agency did not propose a tempered version of Item 15, because of its concern about potential visibility problems when the glass is shattered. Public comment was solicited on whether the agency should allow tempered glass to be used in glass-

plastic glazing in areas requisite for driving visibility. In particular, comment was sought on whether the extra protection offered by tempered glass in side-impact situations would outweigh visibility impairment created when tempered glass fragments are held in position on the plastic layer, blocking the driver's sideward vision. The agency also sought comment on whether prohibition of tempered glass-plastic glazing would unnecessarily hinder innovation or design flexibility.

The agency also proposed that Items 16A, annealed glass-plastic, and 16B, tempered glass-plastic, be allowed in the locations specified for Item 3, that is, in all location not requisite for driving visibility. Both annealed and tempered glazing would be allowed for Item 16 since laminated tempered glass-plastic would not present a visibility problem upon breakage in areas not requisite for driving visibility. In the NPRM, the agency described in detail the need for these new items of glazing, emphasizing the agency's hope that greater use of glass-plastic at side and rear locations would result in ejection mitigation and laceration reduction, in the event of crashes.

In the NPRM, the agency further proposed three technical changes to Standard No. 205. First, NHTSA proposed deletion of the Light Stability Test No. 1, for Item 3 glazing. The rationale for the proposal was that since Item 3 glazing is not used in areas which require driving visibility, a visibility test would not provide any increased degree of safety. Next, the agency proposed an amendment to the Fragmentation Test No. 7, to require a maximum length to width ratio of 3-to-1 and a maximum length of 2 inches for glass fragments resulting from the test. This proposal was intended to prohibit long, thin pieces of tempered glass from being produced after the shattering of glass. Finally, the agency proposed to clarify the definition of gasoline, as was recently done in Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment.* Gasoline is used in a submersion test in Standard No. 205.

II. Public Comments to the NPRM

Comments were received from PPG Industries, Inc. (PPG), Saint-Gobain Vitrage International (SGV), Ford Motor Company (Ford), General Motors Corporation (GM), Motor Vehicle Manufacturers Association of the United States, Incorporated (MVMA), Chrysler Motors Corporation (Chrysler), the Insurance Institute for Highway Safety (IIHS), Monsanto Chemical Company (Monsanto), Flachglas, Aktiengesellschaft (Flachglas), Morton International (Morton), Libbey Owens Ford (LOF), and the Flat Glass Association of Japan (FGAJ). The following summarizes and addresses the comments.

A. Promulgation of Items 15A, 16A, and 16B Glass-Plastic Glazing

None of the commenters opposed the adoption of Item 15, Annealed glass plastic glazing.

IIHS, however, had certain reservations about the use of Items 16A and 16B glazing, which NHTSA proposed to permit in all locations not requisite for driving visibility. That organization stated that "(i)f these glazing materials were restricted to areas that are, in fact, not requisite for driving visibility, this proposed change would merit adoption." IIHS expressed concern, however, that under the current NHTSA interpretations, areas to the rear of the driver in multipurpose passenger vehicles, trucks and buses are not considered requisite for driving visibility. It stated that decreased visibility, such as that found in side and rear windows in multipurpose passenger vehicles, trucks, and buses, may result in safety hazards, including additional collisions during lane changes, backing out of driveways, and other maneuvers that require rearward vision. To support this assertion, it cited a study that it says suggests that inadequate rear visibility in multipurpose passenger vehicles and trucks may already be a factor in many pedestrian-vehicle collisions occurring in driveways and parking lots where children are present. IIHS opposed the adoption of Items 16A and 16B until visibility requirements for side and rear windows of multipurpose passenger vehicles, trucks, and buses are treated the same as passenger cars.

The agency notes that both Items 16A and 16B would be used in lieu of the currently approved Item 3 glazing, that is allowed in areas in multipurpose passenger vehicles, trucks, and buses not currently considered requisite for driving visibility. There is no reason to believe that allowing these two glass-plastic alternatives to Item 3 glazing would adversely affect safety, since they have essentially the same characteristics with respect to visibility. However, for some time, the agency has been aware of the discrepancy between visibility requirements for side and rear windows in passengers cars versus multipurpose passenger vehicles, trucks, and buses. The agency intends to address this discrepancy in a forthcoming rulemaking action.

Cautionary comments about glass-plastic glazing in general were made by LOF, GM, MVMA, and Chrysler. LOF recommended that testing be done on some of the new items of glazing as a result of this rulemaking to see if differences will be seen between acceptable and inferior automotive glazing. LOF stated that when it conducted impact tests of annealed side glass covered with a layer of polyester film, the samples produced what they believed were unacceptable jagged pieces of glass covered with plastic. The agency believes that the combination of tests in the ANS Z26 standard to be conducted on the new items of glazing assure that the tested materials would perform similarly to currently approved material. The agency states this because in developing performance specifications for Item 15, annealed glass-plastic, all the current tests for Item 2 glazing plus the applicable tests (Tests 17, 19, and 24) for the plastic side of Item 14 were adopted. In creating performance specifications for Item 16A, annealed glass-plastic, and 16B, tempered glass-plastic, the agency adopted performance tests for Item 3, laminated glazing plus the tests (Tests 19 and 24) from Item 14 that are applicable to the interior (plastic) side of the glazing.

GM, MVMA, and Chrysler supported the agency's desire to improve safety through encouraging greater use of glass-plastic glazing. These commenters expressed concerns, however, that improved abrasion resistance is needed before glass-plastic glazing can be successfully used in side window applications. GM noted that its experience with the "Inner-Shield" windshield indicated that glass-plastic glazing is susceptible to damage, even at a windshield location which would be expected to receive less abrasion or mistreatment than side windows. That company stated that mounting glass-plastic glazing in side windows would certainly increase the likelihood of abrasion problems as compared to the windshield, especially as a result of pets and small children. GM also stated that there is great potential for abrasion from moving side windows up and down, particularly after many cycles when dirt and debris have accumulated on the window and/or the weatherseal, and that side windows may become damaged as a result of cleaning.

NHTSA is concerned that the new items of glazing could become damaged as a result of severe use. Nevertheless, the agency believes that if these new types of glazing are permitted, manufacturers may be encouraged to find more durable materials for the plastic layer. Also, customers may come

to understand the utility of the glazing, and learn how to care for it. The agency solicits any information or data that any party may obtain in the future concerning the durability of glass-plastic. The agency also intends to continue monitoring this aspect of glass-plastic glazing performance as this product is reintroduced in the market. If future information indicates that changes in requirements are necessary, the agency will take appropriate action.

Accordingly, this final rule adopts the three new items of glass-plastic glazing that were proposed in the NPRM.

B. Proposal for Item 15B Tempered Glass-Plastic in Locations Requisite for Driving Visibility Other Than the Windshield

In the NPRM, the agency did not propose to create an item of tempered glass-plastic glazing in areas requisite for driving visibility other than the windshield because it was believed that when shattered, the dicing effect of tempered glass in glass-plastic glazing tends to obstruct vision, since the plastic layer tends to hold the diced pieces in place. This tends to adversely affect safety by limiting visibility when such glazing is used in windows that are requisite for driving visibility. The agency requested comments on this issue. The agency further requested information on methods of distinguishing tempered glass from annealed glass.

Although the commenters did not disagree that the dicing effect that occurs when tempered glass-plastic glazing is shattered would obscure vision, none of the commenters believed that concerns about such possible obscuration would outweigh benefits that would be had from glass-plastic glazing in the rear and side windows. Most of the commenters suggested the creation of an Item 15B, tempered glass-plastic glazing for areas requisite for driving visibility other than the windshield. SGV and Morton expressed the opinion that side breakage is most common during burglary attempts when the motor vehicle is parked, and that driving visibility is not an issue. Ford and GM expressed the opinion that some sideward transparency would still remain in a tempered glass-plastic window even after breakage.

Addressing other safety concerns, SGV stated that for tempered glass-plastic, the dicing effect of the broken glass is beneficial since it helps energy absorption. Only the exposed plastic around the cracks acts as an energy absorber. The plastic still bonded to the glass pieces does not absorb energy. Since, when shattered, tempered glass tends to result in more cracks than annealed glass, there would be less of the plastic that would be bonded to the glass pieces, and it would better help absorb energy than annealed glazing. This is significant since in the event of a head contact, a greater amount of plastic separating from the glass along the crack, means more energy has been used in separating the plastic from the glazing, and less energy would be available to be transferred to the head. SGV further stated that the plastic on tempered glass will not tear as readily as plastic does on annealed glass. This is apparently due to the longer continuous sharp glass edges on broken annealed glass.

Regarding other benefits to be had from tempered glass, Ford expressed the opinion that the extra protection against lacerations afforded by the dicing of tempered glass when broken and the greater strength of tempered glass which militates against its breakage in day to day use (due to door slamming, wind and hail damage, and vehicle road shocks) outweigh whatever impairment in the driver's sideward vision may be created when tempered glass-plastic glazing is broken. Both SGV and Morton emphasized that tempered glass is more appropriate than annealed glazing because it is stronger. Because annealed glass is more fragile than tempered glass, vehicle designers would be discouraged from using annealed glass-plastic, and would defer to traditional Item 2 monolithic tempered glass. Since annealed glass is weaker than tempered glass, the technical costs (of increased reinforcement) and warranty costs (for more frequent replacement) for annealed glass-plastic would be much higher.

The commenters argued that in crashes, tempered glass-plastic glazing would be safer than annealed glass plastic. As has been discussed above, the issue of visibility in the event of the tempered glass-plastic shattering was discussed in the rulemaking at issue. The discussion is bolstered by the public comments presented in another rulemaking to amend Standard No. 205. This rulemaking amended Test No. 26 of the ANS Z26 standard to specify clamping when Item 14 glass plastic-glazing is tested. (See 56 FR 12669; March 27, 1991.) In the NPRM for the Test No. 26 rulemaking (54 FR 41636; October 11, 1989), the agency proposed to amend Standard No. 205 to prohibit glass "that is strengthened by any method" from being used in "glass-plastic glazing in any windshield or other location requisite for driving visibility." (See 49 FR at 41641.) After reviewing the comments in the Test No. 26 rulemaking, the agency stated that it has reconsidered its former position that use of tempered glass in glass-plastic glazing could seriously compromise visibility through broken side and rear glass-plastic glazing. The agency now believes that the above described benefits that may be derived from use of tempered glass-plastic glazing outweigh concerns over its potential for more crashes as a result of lessened visibility through broken side and rear glazing.

Accordingly, in an SNPRM published in this issue of the **Federal Register**, the agency is proposing the creation of Item 15B, Tempered glass-plastic glazing, for all locations that are requisite for driving visibility other than the windshield.

C. Deletion of Test No. 1 for Item 3 Glazing

Test No. 1, Light Stability, in the ANS Z26 standard, which has been incorporated by reference into Standard No. 205, is a measure of visual deterioration of the glazing due to exposure to sunlight and humidity. In the NPRM, the agency proposed deletion of this test for glazing that is used in areas that are not requisite for driving visibility, since it saw no safety need for this test requirement in such areas. The NPRM's discussion of the issue of deleting Test No. 1 was somewhat unclear. First, the wrong title was used for the test. Second, although the preamble discussed deletion of the Test No. 1 for only Item 3 glazing, the wording in the proposed revision to the standard proposed deletion of the test for Item 3 and Item 9. However, based on the comments on this proposal, the agency believes its intent was understood by at least some of the commenters.

PPG, Flachglas, LOF and FGAJ commented on this proposal. PPG and Flachglas concurred with the proposal to delete the test for Item 3 glazing but apparently did not note the wording to delete the test from Item 9. PPG stated that deleting this requirement was consistent with the previous deletion of the abrasion resistance requirements for both Item 3 and Item 9 materials. FGAJ pointed out that the NPRM had inaccurately referred to Test No. 1 as *Luminous Transmittance*. Luminous Transmittance is Test No. 2, and is not required for Items 3 and 9 glazing. Test No. 1 is actually called Light Stability, and as stated above, measures the luminous transmittance before and after the environmental tests.

LOF questioned the proposal to eliminate Test No. 1. It noted that the proposal appeared to presume that the

test only monitors the light transmittance of the products. LOF stated that a change in light transmittance can also indicate interlayer deterioration. LOF warned that even though presently used polyvinyl butyral (PVB) undergoes very little, if any decomposition, elimination of this test for laminated or glass-plastic glazing may in the future allow plastics that have inferior weathering characteristics, and thus allow production of glazing products that may have long range safety and reliability problems.

The agency believes that the new issues raised by the commenters on the utility of Test No. 1 for Item 3 may have merit. The agency is also concerned that the discussion in the NPRM on this issue may not have been clear to some commenters. Therefore, in the SNPRM that appears in this issue of the Federal Register, the agency is providing another opportunity for public comment on this issue and is specifically asking for test data to document the type of safety problems that may arise by using plastics that would fail Test No. 1.

D. Test No. 7, Fracture (Fragment Size)

Currently, Fracture Test No. 7 measures the fragment size of tempered glass after it has been broken. Standard No. 205 currently allows fragments weighing up to 0.15 ounce and places no restrictions on the size or shape of the fragment. Having been advised by a truck trailer manufacturer in a 1986 meeting with NHTSA's Office of Enforcement that tempered glass could break into long, thin needles, the agency is concerned that these shapes could result in serious injury to vehicle occupants and others in the event of crashes. The agency stated its belief that glass that breaks into pieces larger than two inches may be poorly tempered, and that proper tempering will routinely produce glazing that breaks as intended in Standard No. 205. In the NPRM, the agency proposed to modify the test requirements to impose a maximum length of 2 inches on these fragments and a maximum length-to-width ratio of 3-to-1.

Most commenters expressed strong disagreement with the proposal. The main point of most of the comments was that the fact that the agency has received reports of unusual shapes of broken tempered glass does not mean that glass was improperly tempered. The unusual shapes may be due, they reported, to the forces involved in the breaking of the glass. Some commenters indicated that properly tempered glazing breaks in a variety of patterns, and in general, large deflections at the location of impact increase the probability of long, thin fragments. LOF stated that tempered glazing behaves differently in car accidents than under laboratory conditions because in accidents the glazing is subjected to severe mechanical stress and/or unusual break point locations that affect the size and shape of the glazing. It asserted that unusual pieces of broken tempered glazing from car accidents do not always indicate that the glass was not properly tempered. LOF also argued that the proposed rule of allowing a maximum length-to-width ratio of 3–1 without a lower size limit would eliminate all tempered automotive glazings, whether tempered or not. It stated that its preliminary testing of both laboratory samples and automotive parts indicates that all tempered glass, when broken, produces small pieces of glass that have a length-to-width ratio greater than 3-to-1.

Some commenters suggested several alternate tests to assess fragmentation. Chrysler suggested using the Economic Commission of Europe's (ECE) Regulation 43. PPG and Ford suggested using the test in the then-pending 1990 version of ANS Z26. LOF suggested the use of other criteria such as a variable maximum fragment size based on the thickness of the glazing. The agency has reviewed these alternatives.

The agency is not certain the ECE R43 Regulation prohibits narrow fragments any more than the current Standard No. 205 test does. To summarize, the ECE R43 Fragmentation Test uses a full size specimen. The description of the mounting of the glass is rather vague. The impact points vary depending on the shape and type of glazing. The specimen is broken with either a hammer or an object with a similarly shaped point. After fracture, compliance with the test is determined by counting the number of fragments in a given area. ECE R43 states in part, that the test shall be deemed to have given a satisfactory result if "[t]he number of fragments in any 5 cm x 5 cm square is not less than 40 or more than 400, or in the case of glazing not more than 3.5 mm thick, 450." There also may be no fragments more than 7.5 cm (3 inches) long.

The agency is also not certain the 1990 version of ANS Z26 would do more to prohibit narrow fragments. Very briefly, the 1990 ANS Z26 contains a modified version of the 1980 version of the ANS Z26 Fracture test. This 1990 test has similarities to the ECE R43 test. Both the 1990 ANS Z26 and ECE R43 tests use a full size specimen of glazing. A pointed object may be used to break the glass. The 1990 ANS Z26 has no further restriction on shape or size of the fragments than the 1980 version of ANS Z26.

The agency believes there may be problems with LOF's recommendation. LOF suggested a variable maximum weight, based on the glass thickness. When the standard was established for a maximum weight of 0.15 ounces, the tempered glass then used was much thicker, approximately 0.250 inch thick. This is in contrast to tempered glass currently used which is about 0.125 inch thick. This reduction in thickness means that if LOF's recommendation were adopted, fragments of an increased length and width would be permitted, for the same weight.

Based on the commenters' assertion that even properly tempered glazing may not comply with the proposed test, and the absence of conclusive data to support or refute that assertion, the agency cannot conclude that the proposal would be practicable. The agency has therefore decided not to adopt the proposal to restrict length and length-to-width ratios of broken fragments in the final rule. However, the agency is still concerned about the need for a more effective fracture test. The agency will continue evaluating the issue and seeks at some point to propose an objective test procedure with a practicable means of compliance.

E. Clarification of the Definition of Gasoline Used in FMVSS 205 Testing

The chemical test in Standard No. 205 includes submersion in "gasoline," a term that is not defined. Therefore, in the NPRM the agency proposed adopting the definition of "gasoline" currently used in FMVSS No. 108, that is, American Society for Testing and Materials (ASTM) Reference Fuel C. Reference Fuel C consists of 50 percent toleune and 50 percent isooctane. The composition is similar to typical 89 octane unleaded gasoline without the hazardous material, benzene.

The only comment on this issue was from Chrysler, which concurred with the proposal. Accordingly, the agency is adopting as final the definition of gasoline as ASTM Reference Fuel C for Standard No. 205.

F. Miscellaneous Issues Raised by Commenters

The following are additional issues raised by the commenters that have not been addressed in the previous sections. The agency has considered each of these issues and addresses them as follows:

In lieu of the numbering system for the new items of glazing proposed in the

NPRM, Ford suggested a different system. It suggested that in addition to current Item 14 glass-plastic (for use anywhere in a vehicle), the agency add Items 14a (tempered glass plastic for use in areas requisite for driving visibility), 14b (proposed Item 15), 14c (proposed Item 16A), and 14d (proposed Item 16B). Ford suggested that it would add to clarity to group all these categories of glass plastic together.

The agency believes the basic issue in numbering is what system would be least confusing. Numbering is important for importation, and for law enforcement purposes by Federal, state, and local governments. To this end, there has been extensive experience with the current numbering system for glazing, that is, numbering the items by where they are located in the vehicles, not by the type of glazing. The agency proposed separate numbers, such as 15 and 16, in the belief that they would be less confusing than a single number distinguished by an alphabetical suffix indicating the location in vehicles in which an item of glazing may be used. The agency's proposal is consistent with the current numbering practice in which new items of glazing are assigned specific numbers. The numbers that have been assigned to the items of glass-plastic glazing, numbers 14, 15A, 16A, and 16B, correspond to the order of the items of conventional glazing, Items 1, 2, and 3, in that the item of glazing that may be used anywhere in a motor vehicle including the windshield appears first, followed by the glazing that may be used in areas requisite for driving visibility, except the windshield, and last, the glazing that may be used only in areas not requisite for driving visibility. Since in the case of both conventional glazing and glass-plastic glazing, identifier numbers are used, and locations specified for the glazing appear in the same order, the existing system makes it easier to remember where the new items of glass-plastic glazing may be used. For these reasons, the agency does not agree that Ford's numbering system would add to clarity, and the agency has decided not to adopt Ford's suggestion.

The FGAJ suggested deletion of the Boil Test, Test No. 4, from all the proposed categories of glass-plastic. It also requested deleting Test No. 4 from the list of tests currently required for Item 14. It proposed that Test No. 4 be replaced by the Bake Test, Test No. 5. The Bake Test is used in ANS Z26 for testing whether "multiple glazing units" will withstand tropical temperatures over an extended period of time. A multiple glazing unit has two or more sheets of glazing separated by an air space. The test is conducted at 212 degrees Fahrenheit, the same temperature as the Boil Test.

The main difference between the two tests is the presence of humidity or water in the Boil Test which is absent in the Bake Test. The agency is aware from field reports and certification test failures from independent laboratories, that some grades of plastic will become opaque in the presence of moisture. If not detected, this could be a hazardous situation in humid, hot climates. Accordingly, the agency believes that it is inappropriate to replace the Boil Test with the Bake Test.

G. Technical Amendments

In the NPRM, the agency stated its intent to make certain tests for Item 14 glass-plastic glazing applicable to the three new items of glass-plastic glazing. The NPRM did not explicitly state that changes to Tests 17 (Abrasion resistence (plastics)), 19 (Chemical resistance), and 28 (Temperature change), made when Item 14 was promulgated, to make the tests more appropriate for glass-plastic glazing, would also apply to the three new items of glass-plastic glazing. The NPRM also did not explictly state that Item 15 is prohibited in convertible-type vehicles, as is Item 14, to prevent excessive deterioration of glazing in areas requisite for driving visibility due to ultraviolet radiation. The final rule make explicit the agency's intent in these areas.

H. Effective Date

This rule relieves a restriction in Standard No. 205, by facilitating the use of glass-plastic glazing at all glazing locations in motor vehicles. It permits those manufacturers that wish to increase the use of glass-plastic glazing in their vehicles and that are able to do so to use more glass-plastic glazing. On the other hand, those manufacturers that cannot increase the use of glass-plastic glazing at this time or that do not wish to do so will not be required to use glass-plastic glazing. Because this rule permits, but does not require, the increased use of glass-plastic glazing, the agency has concluded that this option should be in place sooner than 180 days after the issuance of this rule. Therefore, the agency finds for good cause that this rule should become effective 30 days after it is published.

III. Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of this rule are so minimal that a full regulatory evaluation is not required. Public comments were sought on the issue of likely costs and benefits that would be associated with the addition of the new items of glazing. In response, GM stated that the rule would not impose additional costs because the new items of glazing are to be used at the option of motor vehicle manufacturers. The agency concurs with this comment and concludes that since this final rule does not establish a requirement in Standard No. 205, but allows options for expansion of technology, there are no additional required costs to the consumer or the manufacturers of either motor vehicles or motor vehicle glazing.

Regulatory Flexibility Act

The agency has also consider the effects of this rulemaking under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule would have no significant effect even if all of the motor vehicle manufacturers or manufacturers of motor vehicle glazing in the United States were considered as small businesses or other smal entities. The rationale for this certification is that this rule imposes no requirements. Instead the rule allows new glazing materials to be developed, produced and used at the option of manufacturers. Also, small organizations and governmental jurisdictions purchasing glazing or new vehicles will not be affected since the cost of motor vehicles and glazing will, at most, be negligibly affected.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. It has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this rule and determined that it will not have a significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires, Incorporation by reference.

In consideration of the foregoing, 49 CFR part 571 is amended as set forth below:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.205, S5.1.1.1(d) is revised to read as follows:

§ 571.205 Standard No. 205, Glazing Materials.

* * * * *

(d) Gasoline, ASTM Reference Fuel C, which is composed of Isooctane 50 volume percentage and Toluene 50 volume percentage. Isooctane must conform to A2.7 in Annex 2 of the Motor Fuels Section of the *1985 Annual Book of ASTM Standards*, Vol. 05.04, and Toluene must conform to ASTM Specification D362–84, *Standard Specification for Industrial Grade Toluene*. ASTM Reference Fuel C must be used as specified in:

(1) Paragraph A2.3.2 and A2.3.3 of Annex 2 of Motor Fuels, Section 1 in the *1985 Annual Book of ASTM Standards;* and

(2) OSHA Standard 29 CFR 1910.106—"Handling Storage and Use of Flammable Combustible Liquids."

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the Technical Reference Library, NHTSA, 400 Seventh Street, SW., Room 5108, Washington, DC 20590, or at the Office of the Federal Register, 1100 L. Street, NW., room 8401, Washington, DC.

* * * * *

§571.205 [AMENDED]

3. In § 571.205, S5.1.2.4, S5.1.2.5, and S6.1 are revised and new S5.1.2.6 through S5.1.2.10 are added to read as follows:

* * * * *

S5.1.2.4 *Item 14—Glass-Plastics.* Glass-plastic glazing materials that comply with the labeling requirements of S5.1.2.10 and Tests Nos. 1, 2, 3, 4, 9, 12, 15, 16, 17, 18, 19, 24, 26, and 28, as those tests are modified in S5.1.2.9 *Test Procedures for Glass-Plastics*, may be used anywhere in a motor vehicle, except that it may not be used in convertibles, in vehicles that have no roof or in vehicles whose roofs are completely removable.

S5.1.2.5. *Item 15A—Annealed Glass-Plastic for use in all Positions in a Vehicle Except the Windshield.* Glass-plastic glazing materials that comply with Test Nos. 1, 2, 3, 4, 5, 12, 16, 17, 18, 24, and 28, as those tests are modified in S5.1.2.9 *Test Procedures for Glass-Plastics*, may be used anywhere in a motor vehicle except the windshield, and may not be used in convertibles, in vehicles that have no roof, or in vehicles with roofs that are completely removable.

S5.1.2.6 [Reserved]

S5.1.2.7. *Item 16A—Annealed Glass-Plastic for Use in all Positions in a Vehicle not Requisite for Driving Visibility.* Glass-plastic glazing materials that comply with Test Nos. 3, 4, 9, 12, 16, 19, 24, and 28, as those tests are modified in S5.1.2.9 *Test Procedures for Glass-Plastics*, may be used in a motor vehicle in all locations not requisite for driving visibility.

S5.1.2.8. *Item 16B—Tempered Glass-Plastic for Use in all Positions in a Vehicle not Requisite for Driving Visibility.* Glass-plastic glazing materials that comply with Test Nos. 3, 4, 6, 7, 8, 16, 19, 24, and 28, as those tests are modified in S5.1.2.9 *Test Procedures for Glass-Plastics*, may be used in a motor vehicle in all locations not requisite for driving visibility.

S5.1.2.9 *Test Procedures for Glass-Plastics.* (a) Tests Nos 6, 7, 8, 9, 12, 16, and 18 shall be conducted on the glass side of the specimen, i.e., the surface which would face the exterior of the vehicle. Tests Nos. 17, 19, 24, and 26 shall be conducted on the plastic side of the specimen, i.e., the surface which would face the interior of the vehicle. Test No. 15 should be conducted with the glass side of the glazing facing the illuminated box and the screen, respectively. For Test No. 19, add the following to the specified list: an aqueous solution of isopropanol and glycol ether solvents in concentration no greater than 10% or less than 5% by weight and ammonium hydroxide no greater than 5% or less than 1% by weight, simulating typical commercial windshield cleaner.

(b) Glass-plastic specimens shall be exposed to an ambient air temperature of −40°C (±5°C), which is equivalent to −40°F (±9°F), for a period of 6 hours at the commencement of Test No. 26, rather than at the initial temperature specified in that test. After testing, the glass-plastic specimens shall show no evidence of cracking, clouding, delaminating, or other evidence of deterioration.

(c) Glass-plastic specimens tested in accordance with Test No. 17 shall be carefully rinsed with distilled water following the abrasion procedure and wiped dry with lens paper. After this procedure, the arithmetic means of the percentage of light scattered by the three specimens as a result of abrasion shall not exceed 4.0 percent.

(d) Data obtained from Test No. 1 should be used when conducting Test No. 2.

S5.1.2.10 *Cleaning instructions.* (a) Each manufacturer of glazing materials designed to meet the requirements of S5.1.2.1, S5.1.2.2, S5.1.2.3, S5.1.2.4, S5.1.2.5, S5.1.2.7, or S5.1.2.8 shall affix a label, removable by hand without tools, to each item of such glazing material. The label shall identify the product involved, specify instructions and agents for cleaning the material that will minimize the loss of transparency, and instructions for removing frost and ice, and, at the option of the manufacturer, refer owners to the vehicle's Owner's Manual for more specific cleaning and other instructions.

(b) Each manufacturer of glazing materials designed to meet the requirements of paragraphs S5.1.2.4, S5.1.2.5, S5.1.2.7, or S5.1.2.8 may permanently and indelibly mark the lower center of each item of such glazing material, in letters not less than 3/16 inch nor more than 1/4 high, the following words,

GLASS PLASTIC MATERIAL—SEE OWNER'S MANUAL FOR CARE INSTRUCTIONS.

* * * * *

S6.1 Each prime glazing material manufacturer, except as specified below, shall mark the glazing materials it manufactures in accordance with section 6 of ANS Z26. The material specified in S5.1.2.1, S5.1.2.2., S5.1.2.3, S5.1.2.4, S5.1.2.5, S5.1.2.7, and S5.1.2.8 shall be identified by the marks "AS 11C", "AS 12", "AS 13", "AS 14", "AS 15A", "AS 16A", and "AS 16B", respectively. A prime glazing material manufacturer is one who fabricates, laminates, or tempers the glazing material.

* * * * *

Issued on: April 10, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91–8849 Filed 4–22–91; 8:45 am]

BILLING CODE 4910–59–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1031, 1144, 1152, 1175, and 1185

[Ex Parte No. 55 (Sub-No. 81)]

Commission Regulations: Technical Amendments

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is making technical changes to its regulations. These changes are intended to update, streamline, and remove obsolete material from the regulations. These changes are not intended to have any substantive impact upon any person or proceeding.

EFFECTIVE DATE: April 23, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245, TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: We are making miscellaneous technical changes to parts 1031, 1144, 1152, 1175, and 1185 as part of our ongoing effort to update and streamline our codified regulations. These changes are not intended to have any substantive impact.

Part 1031. Part 1031 consists of a heading with no regulations codified thereunder. We are removing the heading.

Part 1144. Section 1144.1(a) provides that a rail carrier proposing to cancel a through route and/or a joint rate must give notice of its intent to make such a cancellation 45 days prior to the effective date of the cancellation. Section 1144.1(a) further provides that, for cancellations under 49 U.S.C. 10765(e), the 45-day period must consist of at least a 25-day notice of intent to file followed by a 20-day tariff filing. The reference to 49 U.S.C. 10765(e) is wrong. The reference ought to be to 49 U.S.C. 10705(e). See Ex Parte No. 445 (Sub-No. 1), Intramodal Rail Competition, 1 I.C.C. 2d 822, 824 (1985). We are correcting the error.

Part 1152. The appendix to part 1152 contains a list of the abandonment docket numbers used as identification numbers in our abandonment proceedings. We are updating the list.

Parts 1175 and 1185. In view of our recent removal of the Clayton Act section 10 competitive bidding regulations, we are removing the cross-references to former part 1010. See Ex Parte No. 54 (Sub-No. 1), Removal of Obsolete Clayton Act Section 10 Competitive Bidding Regulations, 56 FR 9635 (March 7, 1991).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

This action will not have a significant effect on a substantial number of small entities.

List of Subjects

49 CFR Part 1144

Railroads.

49 CFR Part 1152

Administrative practice and procedure, Conservation, Environmental protection, National forests, National parks, National trails system, National resources, Public lands—grants, Public lands—rights-of-way, Railroads, Recreation and recreation areas, Reporting and recordkeeping requirements.

49 CFR Part 1175

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, Securities.

49 CFR Part 1185

Administrative practice and procedure, Antitrust, Railroads.

Decided: April 8, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Kathleen M. King,

Acting Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1031, 1144, 1152, 1175, and 1185 of the Code of Federal Regulations are amended as follows:

PART 1031—[Removed]

1. The heading for part 1031 is removed.

PART 1144—INTRAMODAL RAIL COMPETITION

3. The authority citation for part 1144 continues to read as follows:

Authority: 49 U.S.C. 10321, 10703, 10705, 10707, and 11103; and 5 U.S.C. 553.

§ 1144.1 [Amended]

4. In § 1144.1, the second sentence of paragraph (a) is amended by removing "10765(e)" and by inserting in lieu thereof "10705(e)".

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

5. The authority citation for part 1152 continues to read as follows:

Authority: 5 U.S.C. 553, 559, and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d) and 1248; and 49 U.S.C. 10321, 10362, 10505, 10903, 10904, 10905, 10906, 11161, andf 11163.

6. In the appendix to part 1152, AB numbers 279 through 342 are added to read as follows:

Appendix

AB No.	Name of Carrier
* * * * *	
279	Canadian National Railway Company.
280	Hillsboro & Northeastern Railway Company.
281	Texas North Western Railway Company.
282	Graham County Railway.
283	Ware Shoals Railroad Company.
284	Iowa Northern Railroad Company.
285	The Nevada Northern Railway Company; Los Angeles Department of Water and Power d/b/a Nevada Northern Railway Company.
286	The New York, Susquehanna and Western Railway Corporation.
287	The Port Huron and Detroit Railroad Company.
288	Franklin County Railroad Corporation.
289	Central Railroad Company of Indianapolis, Inc.
290	Norfolk and Western Railway Company; Norfolk Southern Railway Company; Southern Railway Company; The Alabama Great Southern Railroad Company; Carolina and Northwestern Railway Company; The Cincinnati, New Orleans and Texas Pacific Railway Company; Central of Georgia Railroad Company; The Georgia Midland Railway Company; The Georgia Northern Railway Company; Georgia Southern and Florida Railway Company; Southern Railway—Carolina Division; Tennessee Railway Company; Wabash Railroad Company; The Wheeling and Lake Erie Railway Company; Woodstock & Blocton Railway Company.
291	Andalusia & Conecuh Railroad Company.
292	Alabama & Florida Railroad Company, Inc.
293	Detroit & Mackinac Railway Company.
294	Gulf & Mississippi Railroad Corporation.
295	The Indian Railroad Company.
296	The Robeson County Railroad Corporation.
297	Columbus & Greenville Railway Co.
298	Iowa Southern Railroad Company.
299	Oregon & Northwestern Railroad Co.

Appendix—Continued

AB No.	Name of Carrier
300	Chicago Rail Link.
301	SouthRail Corporation.
302	Chicago, Missouri & Western Railroad Company.
303	Wisconsin Central Ltd.
304	MidLouisiana Rail Corporation.
305	Nicholas, Fayette & Greenbrier Railroad Company.
306	Kewash Railroad, Inc.
307	Wyoming and Colorado Railroad Company, Inc.
308	Central Michigan Railway Company.
309	Cimarron River Valley Railway Company.
310	Utah Railway Company.
311	White River Park Development Commission.
312	South Carolina Central Railroad Company, Inc.
313	The Southeastern Pennsylvania Transportation Authority.
314	Chicago, Central & Pacific Railroad Company.
315	Texas Central Railroad Company.
316	Angelina and Neches River Railroad Company.
317	Indiana Harbor Belt Railroad Company.
318	Louisiana & Delta Railroad, Inc.
319	Florida Central Railroad Company, Inc.
320	Upper Merion and Plymouth Railroad Company.
321	Kansas City Public Service Freight Operation.
322	NRUC Corporation (St. Lawrence Railroad Division).
323	Ogdensburg Bridge and Port Authority.
324	Arkansas and Missouri Railroad Company, Inc.
325	Florida Midland Railroad Company, Inc.
326	Washington Central Railroad Company, Inc.
327	St. Joseph Terminal Railroad Company.
328	Community Improvement Corporation.
329	Cedar Valley Railroad Company.
330	Otter Tail Valley Railroad Company, Inc.
331	Bi-State Development Agency of the Missouri-Illinois Metropolitan District.
332	The Bloomer Line.
333	Unity Railways Company.
334	Crosbyton Railroad Company.
335	KCT Railway Corporation.
336	Indiana Hi-Rail Corporation.
337	Dakota, Minnesota & Eastern Railroad Corporation.
338	Oregon, California & Eastern Railway Company, Inc.
339	The Port of Tillamook Bay.
340	Lenawee County Railroad Company.
341	The Southwestern Railroad Company, Inc.
342	Buffalo Creek & Gauley Railroad Co.

PART 1175—EXEMPT ISSUANCE OF SECURITIES AND ASSUMPTION OF OBLIGATIONS

7. The authority citation for part 1175 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 11301; 5 U.S.C. 553.

§ 1175.1 [Amended]

8. Section 1175.1 is amended by removing paragraph (c).

PART 1185—INTERLOCKING OFFICERS

9. The authority citation for part 1185 continues to read as follows:

Authority: 49 U.S.C. 10321, 11322, and 10505; 5 U.S.C. 553 and 559.

§ 1185.1 [Amended]

10. Section 1185.1 is amended by removing paragraph (d).

[FR Doc. 91-9480 Filed 4-22-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 901239-1061]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of approval of a Pacific halibut catch sharing plan.

SUMMARY: NOAA announces approval by the Secretary of Commerce (Secretary) of a Catch Sharing Plan to allocate the catch of Pacific halibut in 1991 in the International Pacific Halibut Commission (IPHC) statistical Area 2A between treaty Indian and non-Indian commercial and recreational fishermen.

The approved 1991 Catch Sharing Plan (Plan) allocates the total allowable catch (TAC) of Pacific halibut in Area 2A between domestic users in accordance with the Northern Pacific Halibut Act of 1982. The 1991 Plan extends the 1990 Catch Sharing Plan into 1991 as adjusted for the revised TAC for Area 2A established by the IPHC for 1991. The intended effect of the Plan is to ensure the conservation and management of Pacific halibut stocks by limiting equitably distributing the allowable harvest among affected user groups in Area 2A. The Plan is for 1991 only and will be implemented in the regulations of the IPHC.

DATE: April 18, 1991.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, Washington 98115; telephone 206-526-6140.

SUPPLEMENTARY INFORMATION: The Northern Pacific Halibut Act (Halibut Act), Public Law 97-176, 16 U.S.C. 773c(c) authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the allocation of Pacific halibut catch in U.S. Convention waters which are in addition to, but not in conflict with, the regulations of the International Pacific Halibut Commission (IPHC). The geographic area herein involved in all U.S. marine waters lying south of the U.S./Canadian border including Puget Sound, known as IPHC statistical Area 2A. The Secretary has general responsibility to carry out the Halibut Convention and the Halibut Act in accordance with 16 U.S.C. 773c(a).

The Pacific Fishery Management Council (Council) developed Catch Sharing Plans for user groups in Area 2A in 1988, 1989, and 1990 because the combined harvest capacity of the treaty Indian and non-Indian commercial and recreational fisheries would exceed the TAC established by the IPHC. However, the Council advised NMFS that it did not intend to reconsider allocation of halibut in Area 2A for 1991. NMFS has determined that a Catch Sharing Plan for the three user groups in Area 2A is again necessary in 1991 because the combined fishing power of the user groups will exceed the 450,000 pound (204.1 metric tons (mt)) TAC for Area 2A in 1991. Although the TAC is 70,000 pounds (31.8 mt) less than 1990, other factors that influence the fishery have not substantially changed since 1990. Therefore, in the absence of Council recommendations for 1991 or information that indicates that the 1990 percentage allocations might be inappropriate, NMFS proposed continuing the 1990 Catch Sharing Plan into 1991.

A notice was published in the **Federal Register** on January 14, 1991 (56 FR 1378), that notified the public of NOAA's intent to continue the 1990 Catch Sharing Plan and requested public comments on the 1990 allocations and their appropriateness for continuation into 1991. The comment period was extended on February 1, 1991 (56 FR 4029). The notice also described the 1990 Catch Sharing Plan and provided information on the need and public

process for the Council's development of the allocations, which were approved by the Secretary in 1990 (55 FR 11590, March 30, 1990).

Comments on the proposed continuation of the 1990 Catch Sharing Plan into 1991 were received from treaty Indian representatives and from Oregon sport fishermen and are summarized with responses as follows.

Comment: Treaty Indian representatives, including the Bureau of Indian Affairs, recommended that the 1991 harvest level for treaty Indian fishermen in the State of Washington be no less than the 1989 level, which was 152,000 pounds (68.9 mt). The commenters believe that the allocation level assigned to the tribes in 1990 did not reflect their view of full or fair treaty entitlement, nor did it meet the needs of tribal fishermen. Further, the commenters believe that continuation of the 1990 allocations into 1991 would be inconsistent with the standards of *U.S.* v. *Washington* and would destabilize the tribal harvest of Pacific halibut.

Response: NOAA believes that continuation of the 1990 Catch Sharing Plan is an appropriate approach because it was developed through a public process that involved all affected parties. All user groups in Area 2A are affected by the lowered TAC for 1991. An increase in the Washington Treaty tribal allocation to the 1989 level of 152,000 pounds (68.9 mt) (34 percent) as proposed by the commenters would leave only 298,000 pounds (135 mt) (66 percent) for the non-Indian commercial and recreational fisheries in all of Area 2A including waters off Oregon and California as well as Washington. The 1990 Catch Sharing Plan, which allocates 25 percent of the entire Area TAC to Washington treaty tribes, does take into account the tribes' claim to a treaty-secured right to fish for Pacific halibut and provides for a special treaty Indian fishery in accordance with the standards applied in *U.S.* v. *Washington*.

Comment: Treaty Indian representatives expressed concern over use of the percentage allocation for treaty Indian fisheries because of the implications it might have for final entitlement determinations.

Response: Entitlement determinations are currently under deliberation in *U.S.* v. *Washington* and *Makah Indian Tribe* v. *Mosbacher*. The existing percentage allocations are intended to provide for equitable sharing of the Pacific halibut resource in Area 2A until final entitlement determinations are made.

Comment: Oregon sport fishermen expressed concern over the larger amount of Pacific halibut that was allocated to Washington sport fishermen than to Oregon sport fishermen.

Response: The allocation between recreational users in Washington and Oregon was developed during a public process that included sport fishing representatives from both states. Factors such as past harvest levels in both states, halibut distribution, and intensity of fishing effort in the various areas were taken into account in allocating a larger amount to Washington users who historically have had greater fishing effort and catch than Oregon users.

Comment: Oregon sport fishermen expressed concern over the commercial allocation exceeding their sport allocation.

Response: The non-treaty commercial allocation does not apply only to Oregon, it applies to the entire Area 2A, and is equal to the combined non-treaty recreational allocations in Area 2A. The Secretary has determined that a continuation of the 1990 Catch Sharing Plan into 1991 is appropriate because factors in the Area 2A fisheries, besides the TAC, have not substantially changed and further that the Catch Sharing Plan was developed by the Council in accordance with the Halibut Act through a public process that involved all affected parties. The Secretary hereby approves continuation of the 1990 Catch Sharing Plan into 1991 as follows.

1991 Catch Sharing Plan for Area 2A

The 1991 Plan allocates 25 percent of the Area 2A TAC to Washington treaty Indian tribes and 75 percent to non-Indian fishermen. The treaty Indian allocation includes both tribal commercial and ceremonial and subsistence (C&S) fisheries. The allocation among non-treaty fishermen is divided 50 percent to commercial users and 50 percent to recreational users. The recreational allocation is further divided 61 percent to Washington users and 39 percent to Oregon and California users. The Washington recreational allocation applies to the coastal and inland waters off Washington and includes the north coast of Oregon, north of Cape Falcon. The Oregon recreational allocation applies to waters off Oregon south of Cape Falcon and includes the California coast.

This Plan distributes the 1991 TAC of 450,000 pounds (204.1 mt) in Area 2A as sub-quotas between the user groups as follows:

	Pounds
Treaty Indian sub-quota	112,500
Non-Indian Commercial sub-quota	168,750
Non-Indian Washington Recreational sub-quota	102,938
Non-Indian Oregon Recreational sub-quota	65,812
Total	450,000

Specific regulations to implement the 1991 Plan and the tribal and state recommendations on seasons and bag limits to achieve, but not exceed the sub-quotas, have been approved by the IPHC and will be incorporated into the 1991 IPHC regulations on Pacific halibut in U.S. waters, which will be published in the **Federal Register** at 50 CFR part 301.

Classification

The 1991 Plan is a general statement of agency policy, which does not require notice and comment rulemaking under the Administrative Procedure Act at 5 U.S.C. 553(b) or any other law. Consequently, the Regulatory Flexibility Act does not require a regulatory flexibility analysis.

This general statement of agency policy is not a major rule requiring the preparation of a regulatory impact analysis under Executive Order 12291. This statement is not likely to result in an annual effect on the economy of $1000 million or more; a major increase in costs or prices for consumers, individuals, industries, Federal, state or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. A regulatory impact review was prepared for the 1990 Catch Sharing Plan. A copy may be obtained from the Regional Director.

An Environmental Assessment (EA) was prepared for the 1990 IPHC regulations incorporating the 1990 Catch Sharing Plan in accordance with the National Environmental Policy Act (NEPA) and the Assistant Administrator for Fisheries, NOAA, determined that there would be no significant adverse environmental impact resulting from the regulations and that preparation of an environmental impact statement was not required by Section 102(2)(c) of NEPA or its implementing regulations. A copy of the 1990 environmental assessment is available from the Regional Director.

This statement does not contain policies with federalism implications

sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This statement does not contain a collection of information requirement subject to the Paperwork Reduction Act.

This statement has been determined to be consistent to the maximum extent practicable with applicable State coastal management programs as required under section 7 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties, Reporting and recordkeeping requirements.

Authority: 5 U.S.T. 5; T.I.A.S. 2900; 16 U.S.C. 773–773k.

Dated: April 17, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91–9483 Filed 4–18–91; 2:55 pm]

BILLING CODE 3510-22-M

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50 CFR Part 301

RIN 0648–AD52

[Docket No. 910369–1069]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final rule.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission, publishes notice of regulations promulgated by that Commission and approved by the United States Government to govern the Pacific halibut fishery. These regulations are intended to enhance the conservation of Pacific halibut stocks in order to help rebuild and sustain them at an adequate level in the north Pacific Ocean and Bering Sea.

EFFECTIVE DATE: April 18, 1991.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, AK, 99802, telephone 907–586–7229; Rolland A. Schmitten, Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle WA, 98115, telephone 206–526–6140; or Donald McCaughran, Executive Director, International Pacific Halibut Commission, P.O. Box 5009, University Station, Seattle, Washington 98105, telephone 206–624–1838.

SUPPLEMENTARY INFORMATION: The International Pacific Halibut Commission (IPHC), under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has promulgated new regulations governing the Pacific halibut fishery. The regulations have been approved by the Secretary of State of the United States of America and by the Governor-General of Canada by Order-in-Council. On behalf of the IPHC, these regulations are published in the **Federal Register** to provide notice of their effectiveness, and to inform persons subject to the regulations of the restrictions and requirements established therein.

The substantive changes from the previous regulations published at 54 FR 19895 (May 9, 1989) and 55 FR 11929 (March 30, 1990), are as follows: (1) New commercial and treaty Indian halibut fishing seasons and catch limits are established; (2) new sport fishing seasons and bag limits are established; and (3) revised regulations are implemented that (a) require that the vessel license application form be accurate and signed by the vessel owner, (b) prohibit the possession of halibut that has its head removed onboard commercial vessels in Area 2A, (c) prohibit the possession of halibut onboard vessels carrying a trawl net or fishing pots capable of catching halibut, (d) stipulate that sport-caught halibut that are not immediately returned to sea with a minimum of injury will be included in the fisherman's bag limit, and (e) make the operator of a charter vessel liable for violations committed by passengers.

The Secretary of State has disapproved one of the regulations developed by the IPHC. The regulation would have prohibited retention of Pacific halibut caught by crew sport fishing from charter vessels in Area 3A. The Secretary of State recognized the controversial nature of this measure and the perceived lack of public notice of its development and, therefore, disapproved this regulation for 1991.

The Northern Pacific Halibut Act of 1982 (the Act), 16 U.S.C. 773C(c), authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. Convention waters which are in addition to, but not in conflict with, regulations of the IPHC. Pursuant to this authority, the Under Secretary of Commerce for Oceans and Atmosphere directed the Pacific and North Pacific Fishery Management Councils to allocate halibut catches should such allocation be necessary.

In compliance with this directive, the Pacific Fishery Management Council (PFMC) developed Catch Sharing Plans for 1988, 1989, and 1990 to allocate the total allowable catch (TAC) of Pacific halibut among treaty Indian, non-Indian commercial, and non-Indian sport fisheries in the Commission statistical Area 2A off Washington, Oregon, and California. However, due to budgetary constraints, the PFMC did not develop a Catch Sharing Plan for 1991. Because all factors in the Area 2A fishery, except for the reduced TAC, are essentially the same as 1990, the Secretary of Commerce has approved a continuation of the 1990 Plan into 1991, with allocations revised proportionately due to the lower TAC (see this issue). The 1990/91 Plan allocates 25 percent of the Area 2A TAC of 450,000 pounds (204.1 metric tons) to Washington treaty Indian tribes (112,500 pounds/51.0 metric tons) and 75 percent to non-Indian fishermen (337,500 pounds/153.1 metric tons). The treaty Indian allocation is divided between tribal commercial (102,500 pounds/46.5 metric tons) and ceremonial and subsistence (10,000 pounds/4.5 metric tons) fisheries. The allocation among non-Indian fishermen is divided 50 percent to commercial users (168,750 pounds/76.5 metric tons) and 50 percent to recreational users (168,750 pounds/76.5 metric tons). The recreational allocation is further divided 61 percent to Washington users (102,938 pounds/46.7 metric tons) and 39 percent to Oregon and California users (65,812 pounds/29.9 metric tons). The allocations are distributed as sub-quotas to each user group. The Washington recreational allocation applies to the coastal and inland waters off Washington and includes the north coast of Oregon, north of Cape Falcon. The Oregon recreational allocation applies to waters off Oregon south of Cape Falcon and includes the California coast. These allocations and the management measures necessary to achieve but not exceed each sub-quota are implemented in these regulations.

The North Pacific Fishery Management Council (NPFMC) solicited regulatory proposals from the general public, other agencies and staff between August 15 and September 15, 1990. The NPFMC received 18 proposals. At its meeting on December 3, 1990, the NPFMC developed and forwarded to the Secretary of Commerce for publication in the **Federal Register** a proposed regulation that would (1) divide

Regulatory Area 4E into a northwest subarea and a southeast subarea; (2) apportion 70 percent of the IPHC catch limit for Regulatory Area 4E to the northwest subarea and 30 percent to the southeast subarea; and (3) make 50 percent of any unharvested catch limit remaining in the northwest subarea on August 1 available for harvest in the southeast subarea. The proposed regulation is similar to an interim final rule promulgated by the Secretary for the 1990 Pacific halibut fishery in Regulatory Area 4E (55 FR 21877, May 30, 1990). The Secretary published the proposed regulation in the **Federal Register** on February 27, 1991 (56 FR 8178). If, after receipt and consideration of public comment, the Secretary decides to adopt the proposed rule as final, it will be effective before the opening of the commercial Pacific halibut fishery in Regulatory Area 4E on June 1, 1991.

The commercial fishery in Area 2A may exceed the sub-quota for this fishery during the first 10-hour opening dependent upon the number of vessels that participate in the fishery. The IPHC may impose vessel trip limits if information available to IPHC staff prior to the July 22 opening indicates that the number of vessels likely to participate in the fishery are sufficient to exceed the sub-quota during the scheduled 10-hour opening.

Certain regulations were previously developed by the NPFMC and adopted by the Secretary of Commerce pursuant to section 5(c) of the Northern Pacific Halibut Act of 1982. For the convenience and information of the public, these regulations are renumbered and republished in this notice of IPHC regulations as section 301.10(c) [source, 55 FR 23085 (June 6, 1990), and section 301.10(e); sections 301.13 (a), (b), (c), (e), (h), (i), and (j); section 301.16(h) [source, 53 FR 20327 (June 3, 1988)].

Classification

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, *Jensen* v. *National Marine Fisheries Service*, 512 F.2d 1189 (9th Cir. 1975), 5 U.S.C. 553 of the Administrative Procedure Act and Executive Order 12291 do not apply to this notice of the effectiveness and content of the regulations.

The Secretarial rule included at § 301.19 merely provides notice of the boundaries of the treaty Indian tribes' usual and accustomed fishing places as prescribed under Federal judicial decisions. Therefore, opportunity for prior public comment and a delayed effectiveness period are unnecessary and are not being provided under the Administrative Procedure Act, 5 U.S.C. 553. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not apply. No collection of information under the Paperwork Reduction Act is included in the Secretarial rule.

This notice of final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties.

Dated: April 17, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, part 301 is revised to read as follows:

PART 301—PACIFIC HALIBUT FISHERIES

Sec.

Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 773–773k.

§ 301.1 Short title.

This part may be cited as the Pacific Halibut Fishery Regulations.

§ 301.2 Interpretation.

(a) In this part,

Automated hook stripper (commonly known as a crucifier) means a device through which the groundline can be passed during gear retrieval which allows the groundline and hooks to pass freely, but does not allow fish to pass, thereby removing fish from the hooks;

Charter vessel means a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator;

Commercial fishing means fishing, the resulting catch of which either is or is intended to be sold or bartered;

Commission means the International Pacific Halibut Commission;

Fishery officer means any State, Federal, or Provincial officer authorized to enforce this part, including, but not limited to, the National Marine Fisheries Service (NMFS), Canadian Department of Fisheries and Oceans (DFO), Alaska Department of Fish and Wildlife Protection (ADFWP), and the United States Coast Guard (USCG);

Fishing means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area;

Fishing period limit means the maximum amount of halibut that may be retained and landed by a vessel during one fishing period;

Land with respect to halibut means to bring to shore and to offload;

License means a halibut fishing license issued by the Commission pursuant to § 301.3 of this part;

Maritime area, in respect of the fisheries jurisdiction of a Contracting Party, includes without distinction areas within and seaward of the territorial sea or internal waters of that Party;

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel;

Overall length of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments);

Person includes an individual, corporation, firm, or association;

Regulatory area means an area referred to in § 301.6 of this part;

Setline gear means one or more stationary, buoyed, and anchored lines with hooks attached;

Sport fishing means all fishing other than commercial fishing and treaty Indian ceremonial and subsistence fishing;

Tender means vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish processor.

(b) In this part, all bearings are true and all positions are determined by the most recent charts issued by the United States National Ocean Service or the Canadian Hydrographic Service.

§ 301.3 Licensing vessels.

(a) No person shall operate or fish for halibut from a vessel, nor possess halibut on board a vessel used either for commercial fishing or as a charter vessel, unless the Commission has issued a license in respect of that vessel.

(b) A license issued in respect of a vessel referred to in paragraph (a) of this section must be carried on board that vessel at all times and the vessel operator shall permit its inspection by fishery officers of the Contracting Parties.

(c) The Commission shall issue a license in respect of a vessel, without fee from its office in Seattle, Washington, upon receipt of a completed, written, and signed "Application for Vessel License for the Halibut Fishery" form.

(d) Application forms may be obtained from fishery officers of either Contracting Party, or from the Commission.

(e) Information on "Application for Vessel License for the Halibut Fishery" form must be accurate.

(f) The "Application for Vessel License for the Halibut Fishery" form shall be completed and signed by the vessel owner.

(g) Licenses issued under this section shall be valid only during the year in which they are issued.

(h) A new license is required for a vessel that is sold, transferred, renamed, or redocumented.

(i) The license required under this section is in addition to any license, however designated, that is required under the laws of Canada or any of its Provinces or the United States or any of its States.

(j) The United States may suspend, revoke, or modify any license issued under this section under policies and procedures in 15 CFR part 904.

§ 301.4 In-season actions.

(a) The Commission is authorized to establish or modify regulations during the season after determining that such action

(1) Will not result in exceeding the catch limit established preseason for each regulatory area;

(2) Is consistent with the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, and applicable domestic law of either Canada or the United States; and

(3) Is consistent, to the maximum extent practicable, with any domestic catch sharing plans developed by the United States or Canadian governments.

(b) In-season actions may include, but are not limited to, establishment or modification of the following:

(1) Closed areas;

(2) Fishing periods;

(3) Fishing period limits;

(4) Gear restrictions;

(5) Recreational bag limits;

(6) Size limits; or

(7) Vessel clearances.

(c) In-season changes will be effective at the time and date specified by the Commission.

(d) The Commission will announce in-season actions under this section by providing notice to major halibut processors; Federal, State, United States treaty Indian, and Provincial fishery officials; and the media.

§ 301.5 Application.

(a) This part applies to persons and vessels fishing for halibut in waters off the west coast of Canada and the United States, including the southern as well as the western coasts of Alaska, within the respective maritime areas in which each of those countries exercises exclusive fisheries jurisdiction as of March 29, 1979.

(b) Sections 301.6 to 301.18 of this part apply to commercial fishing for halibut.

(c) Section 301.19 of this part applies to fishing for halibut by United States treaty Indian tribes in the State of Washington.

(d) Section 301.20 of this part applies to sport fishing for halibut.

(e) This part does not apply to fishing operations authorized or conducted by the Commission for research purposes.

§ 301.6 Regulatory areas.

The following areas shall be regulatory areas for the purposes of the Convention:

(a) Area 2A includes all waters off the States of California, Oregon, and Washington.

(b) Area 2B includes all waters off British Columbia.

(c) Area 2C includes all waters off the coast of Alaska that are east of a line running 340° true from Cape Spencer Light (latitude 58°11'57" N., longitude 136°38'18" W.), and south and east of a line running 205° true from said light.

(d) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (latitude 57°41'15" N., longitude 155°35'00" W.) to Cape Ikolik (latitude 57°17'17" N., longitude 154°47'18" W.), then along the Kodiak Island coastline to Cape Trinity (latitude 56°44'50" N., longitude 154°08'44" W.), then 140° true.

(e) Area 3B includes all waters between Area 3A and a line extending 150° true from Cape Lutke (latitude 54°29'00" N., longitude 164°20'00" W.) and south of latitude 54°49'00" N. in Isanotski Strait.

(f) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in § 301.9 of this part that are east of longitude 172°00'00" W. and south of latitude 56°20'00" N.

(g) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of latitude 56°20'00" N.

(h) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in § 301.9 of this part which are east of longitude 171°00'00" W., south of latitude 58°00'00" N., and west of longitude 168°00'00" W.

(i) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of longitude 168°00'00" W.

(j) Area 4E includes all waters in the Bering Sea north and east of the closed area defined in § 301.9 of this part, east of longitude 168°00'00" W., and south of latitude 65°34'00" N.

§ 301.7 Fishing periods.

(a) The fishing periods for each regulatory area are set out in the following table and apply where the catch limits specified in § 301.10 have not been taken.

COMMERCIAL FISHING PERIODS IN EACH REGULATORY AREA

2A	2C-3A-3B	4A	4B	4D
7/22	5/07-5/08	5/07-5/08	6/08	8/19-8/22
8/06	9/03-9/04	8/20-8/21	6/17	9/30-[1]
8/19[1]	9/30-[1]	9/03-9/04	6/22	.....
		9/30-[1]	6/29	.....
			7/06	.....
			7/13	.....
			7/20	.....

COMMERCIAL FISHING PERIODS IN EACH REGULATORY AREA—Continued

2A	2C-3A-3B	4A	4B	4D
			7/27	
			8/03	
			8/10	
			8/19-8/22	
			9/30-[1]	

[1] Date to be announced by the Commission.

4C				4E	
6/17-6/18	7/21-7/22	8/24-8/25	9/27- 9/28	6/01-6/03	7/19-7/21
6/19-6/20	7/23-7/24	8/26-8/27	9/29- 9/30	6/04-6/06	7/22-7/24
6/21-6/22	7/25-7/26	8/28-8/29	10/01-10/02	6/07-6/09	7/25-7/27
6/23-6/24	7/27-7/28	8/30-8/31	10/03-10/04	6/10-6/12	7/28-7/30
6/25-6/26	7/29-7/30	9/01-9/02	10/05-10/06	6/13-6/15	8/01-8/03
6/27-6/28	7/31-8/01	9/03-9/04	10/07-10/08	6/16-6/18	8/04-8/06
6/29-6/30	8/02-8/03	9/05-9/06	10/09-10/10	6/19-6/21	8/07-8/09
7/01-7/02	8/04-8/05	9/07-9/08	10/11-10/12	6/22-6/24	8/10-8/12
7/03-7/04	8/06-8/07	9/09-9/10	10/13-10/14	6/25-6/27	8/13-8/15
7/05-7/06	8/08-8/09	9/11-9/12	10/15-10/16	6/28-6/30	8/16-8/18
7/07-7/08	8/10-8/11	9/13-9/14	10/17-10/18	7/01-7/03	8/19-8/21
7/09-7/10	8/12-8/13	9/15-9/16	10/19-10/20	7/04-7/06	8/22-8/24
7/11-7/12	8/14-8/15	9/17-918	10/21-10/22	7/07-7/09	8/25-8/27
7/13-7/14	8/16-8/17	9/19-9/20	10/23-10/24	7/10-7/12	8/28-8/30
7/15-7/16	8/18-8/19	9/21-9/22	10/25-10/26	7/13-7/15	———
7/17-7/18	8/20-8/21	9/23-9/24	10/27-10/28	7/16-7/18	9/01-10/31
7/19-7/20	8/22-8/23	9/25-9/26	10/29-10/30		

(b) Each fishing period in Area 2A shall begin at 0800 hours and terminate at 1800 hours Pacific Standard or Pacific Daylight Time, as applicable, on the date set out in the table to this section, unless the Commission specifies otherwise.

(c) Except as provided in paragraph (d) of this section, each fishing period in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall begin and terminate at 1200 hours Alaska Standard or Alaska Daylight Time, as applicable, on the date set out in the table to this section, unless the Commission specifies otherwise.

(d) The 6/08, 6/17, 6/22, 6/29, 7/06, 7/13, 7/20, 7/27, 8/08, and 8/10 fishing periods in Area 4B shall begin at 0800 hours and terminate at 2000 hours Alaska Standard or Alaska Daylight Time, as applicable, unless the Commission specifies otherwise.

(e) All commercial fishing for halibut in Area 2A shall cease at 1200 hours Pacific Standard Time on October 31.

(f) All commercial fishing for halibut in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall cease at 1200 hours Alaska Standard Time on October 31.

§ 301.8 Closed periods.

(a) No person shall engage in commercial fishing for halibut in any regulatory area other than during the fishing periods set out in § 301.7 of this part in respect of that area.

(b) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

(c) Subject to §§ 301.16 (f) and (g) of this part, this part does not prohibit fishing for any species of fish other than halibut during the closed periods.

(d) Notwithstanding paragraph (c) of this section, no person shall have halibut in his possession while fishing for any other species of fish during the closed periods.

(e) No vessel shall retrieve any halibut fishing gear during a closed period if the vessel has any halibut on board.

(f) A vessel that has no halibut on board may retrieve any halibut fishing gear during the closed period after the operator notifies a fishery officer or representative of the Commission prior to that retrieval.

(g) After retrieval of halibut gear in accordance with paragraph (f) of this section, the vessel shall submit to a hold inspection at the discretion of the fishery officer or representative of the Commission.

(h) No person shall retain any halibut caught on gear retrieved under paragraph (f) of this section.

(i) No person shall possess halibut aboard a vessel in a regulatory area during a closed period unless that vessel is in continuous transit to or within a port in which that halibut may be lawfully sold.

§ 301.9 Closed area.

All waters in the Bering Sea that are north of latitude 54°49'00" N. in Isanotski Strait that are enclosed by a line from Cape Sarichef Light (latitude 54°36'00" N., longitude 164°55'42" W.) to a point at latitude 56°20'00" N., longitude 168°30'00" W.; thence to a point at latitude 58°21'25" N., longitude 163°00'00" W.; thence to Strogonof Point (latitude 56°53'18" N., longitude 158°50'37" W.); and then along the northern coasts of the Alaska Peninsula and Unimak Island to the point of origin at Cape Sarichef Light are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his possession while in those waters except in the course of a continuous transit across those waters.

§ 301.10 Catch limits.

(a) The total allowable catch of halibut to be taken during the halibut fishing periods specified in § 301.7 of this part shall be limited to the weight expressed in pounds or metric tons shown in the following table:

Regulatory area	Catch limits	
	Pounds	Metric tons
2A	168,750	77
2B	7,400,000	3,357
2C	7,400,000	3,357
3A	26,600,000	12,066
3B	8,800,000	3,991
4A	1,700,000	771
4B	1,700,000	771
4C	600,000	272
4D	600,000	272
4E	100,000	45

(b) The weights in each catch limit shall be computed on the basis that the

heads of the fish are off and their entrails removed.

(c) The Commission shall determine and announce to the public the date on which the catch limit for each regulatory area will be taken and the specific dates during which fishing will be allowed in each regulatory area.

(d) If the Commission determines that the catch limit in any regulatory area specified in paragraph (a) of this section would be exceeded in an unrestricted 24-hour, 10-hour, or 12-hour fishing period as specified in §§ 301.7(b), (c) or (d), the catch limit for that area shall be considered to have been taken, unless fishing period limits are implemented.

(e) Notwithstanding paragraph (a) of this section, Areas 3A and 3B shall both be closed if the catch limit of 35,400,000 pounds (16,057 metric tons) for the combined areas is taken.

(f) Notwithstanding paragraph (a) of this section, Areas 4A and 4B shall both be closed if the catch limit of 3,400,000 pounds (1,542 metric tons) for the combined areas is taken.

(g) When under paragraphs (c), (d), (e), or (f) of this section the Commission has announced a date on which the catch limit for a regulatory area will be taken, no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

§ 301.11 Fishing period limits.

(a) It shall be unlawful for any vessel to retain or land more halibut than authorized by the vessel's license in any fishing period for which the Commission has announced a fishing period limit.

(b) When fishing period limits are in effect, a vessel's maximum allowable catch will be determined by the Commission based on:

(1) The vessel's overall length in feet and associated length class;

(2) The average performance of all vessels within that class; and

(3) The remaining catch limit.

(c) Length classes are shown in the following table:

Overall length	Vessel class
1–25	A
26–30	B
31–35	C
36–40	D
41–45	E
46–50	F
51–55	G
56–+	H

(d) Notwithstadning paragraph (b) of this section, all vessels fishing in Area 4C shall be limited to a maximum catch of 10,000 pounds (4.5 metric tons) of halibut per fishing period.

(e) Notwithstanding paragraph (b) of this section, all vessels fishing in Area 4E shall be limited to a maximum catch of 6,000 pounds (2.7 metric tons) of halibut per fishing period.

(f) Notwithstanding paragraph (e) of this section, a vessel will be permitted to make multiple fishing trips in Area 4E during the fishing period between September 1 and October 31, but each trip shall be limited to a maximum catch of 6,000 pounds (2.7 metric tons) of halibut and each trip shall be subject to the vessel clearance requirements in § 301.13(c) of this part.

(g) A vessel that fishes during a fishing period when fishing period limits are in effect must offload its catch before fishing in any subsequent fishing period.

(h) A vessel that fishes during a fishing period when fishing period limits are in effect will not be allowed to serve as a tender until its catch has been landed and sold.

(i) No vessel which fishes for halibut in a regulatory area for which a fishing period limit is in effect shall fish in any other regulatory area during that fishing period.

§ 301.12 Size limits.

(a) No person shall take or possess any halibut that—

(1) With the head on, is less than 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in the Appendix following § 301.21 of this part, or

(2) With the head removed, is less than 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in the Appendix following § 301.21 of this part.

(b) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of the minimum size of the halibut for the purpose of paragraph (a) of this section.

(c) No person on board a vessel fishing for, or tendering, halibut caught in Area 2A shall possess any halibut that has had its head removed.

§ 301.13 Vessel clearances.

(a) No person other than a person who lands his total annual halibut catch at ports within Areas 4A, 4B, 4C, 4D, 4E, or the closed area defined in § 301.9 of this part shall fish for halibut in Areas 4A, 4B, or 4D from any vessel, unless the operator of that vessel obtains a vessel clearance both before such fishing and before the unloading of any halibut caught in Areas 4A, 4B, or 4D.

(b) No person other than a person who lands his total annual halibut catch at a port within Area 4C may fish for halibut in Area 4C from any vessel, unless the operator of that vessel obtains a vessel clearance both before such fishing in each fishing period that applies to Area 4C and before the unloading of any halibut caught in that area.

(c) No person other than a person who lands his total annual halibut catch at a port within Area 4E, or the closed area defined in § 301.9 of this part may fish for halibut in Area 4E from any vessel, unless the operator of that vessel obtains a vessel clearance both before such fishing in each fishing period that applies to Area 4E and before the unloading of any halibut caught in that Area.

(d) The vessel clearances required under paragraphs (a), (b), and (c) of this section are mutually exclusive.

(e) The vessel clearances required under paragraphs (a), (b), and (c) of this section may be obtained only at Dutch Harbor or Akutan, Alaska, from a fishery officer of the United States, a representative of the Commission or a designated fish processor.

(f) The vessel operator shall specify the specific fishing period and regulatory area(s) in which fishing will take place.

(g) Vessel clearances required under paragraphs (a), (b), and (c) of this section prior to fishing in Area 4 shall be obtained within the 120-hour period before each of the openings in that Area, between 0800 and 1800 hours, local time.

(h) No halibut shall be on board at the time of clearance required by paragraph (e) of this section.

(i) Vessel clearances required under paragraphs (a), (b), and (c) of this section after fishing in Area 4 shall be obtained within the 120-hour period after each of the closings in that Area, between 0800 and 1800 hours, local time.

(j) The vessel clearances required under paragraphs (b) and (c) of this section are not valid if the vessel has fished for halibut in Areas 4A, 4B, or 4D after obtaining the clearance required for such fishing.

§ 301.14 Logs.

(a) The operator of any vessel five net tons or greater shall keep an accurate log of all halibut fishing operations including the date, locality, amount of gear used, and total weight of halibut taken daily in each locality.

(b) The log referred to in paragraph (a) of this section shall be

(1) Separate from other records maintained on board the vessel;

(2) Updated not later than 24 hours after midnight local time for each day fished and prior to the offloading or sale of halibut taken during that fishing period;

(3) Retained for a period of 2 years by the owner or operator of the vessel;

(4) Open to inspection by a fishery officer or any authorized representative of the Commission upon demand; and

(5) Kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and for 5 days following off-loading halibut.

(c) No person shall make a false entry in a log referred to in paragraph (a) of this section.

§ 301.15 Receipt and possession of halibut.

(a) No person shall receive halibut from a vessel that does not have the license required by § 301.3 on board the vessel.

(b) A person who purchases or otherwise receives halibut from the owner or operator of the vessel from which that halibut was caught, either directly from that vessel or through another carrier, shall record each such purchase or receipt on State fish tickets or Federal catch reports, showing the date, locality, name of vessel, Halibut Commission license number, and the name of the person from whom the halibut was purchased or received and the amount in pounds according to trade categories of the halibut.

(c) No person shall make a false entry on a State fish ticket or Federal catch report referred to in paragraph (b) of this section.

(d) A copy of the fish tickets referred to in paragraph (b) of this section shall be:

(1) Retained by the person making them for a period of 2 years from the date the fish tickets are made; and

(2) Open to inspection by a fishery officer or any authorized representative of the Commission.

(e) No person shall possess any halibut that he knows to have been taken in contravention of this part.

(f) When halibut are delivered to other than a commercial fish processor or primary fish buyer, the records required by paragraph (b) of this section shall be maintained by the operator of the vessel from which that halibut was caught, in compliance with paragraph (d) of this section.

(g) It shall be illegal to enter a Halibut Commission license number on a State fish ticket or Federal catch report for any vessel other than the vessel actually used in catching the halibut reported thereon.

§ 301.16 Fishing gear.

(a) No person shall fish for halibut using any gear other than hook and line gear.

(b) No person shall possess halibut taken with any gear other than hook and line gear.

(c) No person shall possess halibut while on board a vessel carrying any trawl nets or fishing pots capable of catching halibut.

(d) All setline or skate marker buoys carried on board or used by any United States vessel used for halibut fishing shall be marked with one of the following:

(1) The vessel's name,

(2) The vessel's State license number, or

(3) The vessel's registration number.

(e) The markings specified in paragraph (d) shall be in characters at least 4 inches in height and one-half inch in width in a contrasting color visible above the water and shall be maintained in legible condition.

(f) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in waters described in § 301.5(a) of this part during the 72-hour period immediately before the opening of a halibut fishing period shall catch or possess halibut anywhere in those waters during that halibut fishing period.

(g) No vessel from which setline gear was used to fish for any species of fish anywhere in waters described in § 301.5(a) of this part during the 72-hour period immediately before the opening of a halibut fishing period may be used to catch or possess halibut anywhere in those waters during that halibut fishing period.

(h) Notwithstanding paragraphs (f) and (g) of this section, the 72-hour fishing restriction preceding a halibut fishing period shall not apply to persons and vessels fishing for halibut during fishing periods in Areas 4C and 4E as described in §§ 301.6 (h) and (j) of this part.

(i) No person shall fish for halibut from a vessel that is equipped with, or that possesses on board, an automated hook stripper.

(j) No person shall possess halibut on a vessel that is equipped with, or that possesses on board, an automated hook stripper.

§ 301.17 Retention on tagged halibut.

Nothing contained in this part prohibits any vessel at any time from retaining and landing a halibut that bears a Commission tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by a fishery officer.

§ 301.18 Supervision of unloading and weighing.

The unloading and weighing of halibut may be subject to the supervision of fishery officers to assure the fulfillment of the provisions of this part.

§ 301.19 Fishing by United States treaty Indian tribes.

(a) Except as provided in this section in subarea 2A–1, all regulations of the Commission in this part apply to halibut fishing by members of United States treaty Indian tribes located in the State of Washington.

(b) For purposes of this part, United States treaty Indian tribes means the Hoh, Jamestown Klallam, Lower Elwha Klallam, Lummi, Makah, Port Gamble Klallam, Quileute, Quinault, Skokomish, Suquamish, Swinomish, and Tulalip tribes.

(c) Subarea 2A–1 includes all waters off the coast of Washington that are north of latitude 46°53'18" N. and east of longitude 125°44'00" W., and all inland marine waters of Washington.

(d) Commercial fishing for halibut by treaty Indian tribes in subarea 2A–1 is permitted with hook and line gear from March 1 through October 31, or until 102,500 pounds (46.5 metric tons) is taken, whichever occurs first.

(e) Ceremonial and subsistence fishing for halibut by treaty Indian tribes in subarea 2A–1 is permitted with hook and line gear from January 1 to December 31.

(f) The total allowable catch of halibut to be taken during the fishing periods specified in paragraphs (d) and (e) of this section shall be limited to 112,500 pounds (51 metric tons).

(g) No size or bag limits shall apply to the ceremonial and subsistence fishery except that when commercial halibut fishing is prohibited pursuant to paragraph (d) of this section, treaty Indians may take and retain not more than 2 halibut per day per person.

(h) Halibut taken for ceremonial and subsistence purposes shall not be offered for sale or sold.

(i) All halibut sold by treaty Indians during the commercial fishing season specified in paragraph (d) of this section shall comply with the provisions of § 301.12, Size Limits.

(j) Any member of a United States treaty Indian tribe as defined in paragraph (b) of this section, who is

engaged in commercial or ceremonial and subsistence fishing under this part must have on his or her person a valid treaty Indian identification card issued pursuant to 25 CFR Part 249, Subpart A, and must comply with the treaty Indian vessel and gear identification requirements of Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974).

(k) The following table sets forth the fishing areas of each of the twelve United States treaty Indian tribes fishing pursuant to this section. Within subarea 2A–1, boundaries of a tribe's fishing area may be revised as ordered by a Federal court.

Tribe	Boundaries
Makah	North of 48°02'15" N. latitude (Norwegian Memorial), west of 123°42'30" W. longitude, and east of 125°44'00" W. longitude.
Quileute	Between 48°07'36" N. latitude (Sand Point) and 47°31'42" N. latitude (Queets River), and east of 125°44'00" W. longitude.
Hoh	Between 47°54'18" N. latitude (Quillayute River) and 47°21'00" N. latitude (Quinault River), and east of 125°44'00" W. longitude.
Quinault	Between 47°40'06" N. latitude (Destruction Island) and 46°53'18" N. latitude (Point Chehalis), and east of 125°44'00" W. longitude.
Lower Elwha Klallam	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049 and 1066 and 626 F. Supp. 1443, to be places at which the Lower Elwha Klallam Tribe may fish under rights secured by treaties with the United States.
Jamestown Klallam	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1486, to be places at which the Jamestown Klallam Tribe may fish under rights secured by treaties with the United States.
Port Gamble Klallam	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1442, to be places at which the Port Gamble Klallam Tribe may fish under rights secured by treaties with the United States.
Lummi	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 384 F. Supp. 360, as modified in Subproceeding No. 89–08 (W.D. Wash. February 13, 1990) (decision and order re: cross-motions for summary judgment), to be places at which the Lummi Tribe may fish under rights secured by treaties with the United States.
Swinomish	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Swinomish Tribe may fish under rights secured by treaties with the United States.
Tulalip	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1531–1532, to be places at which the Tulalip Tribe may fish under rights secured by treaties with the United States.
Suquamish	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Suquamish Tribe may fish under rights secured by treaties with the United States.
Skokomish	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 384 F. Supp. 377, to be places at which the Skokomish Tribe may fish under rights secured by treaties with the United States.

§ 301.20 Sport fishing for halibut.

(a) No person shall engage in sport fishing for halibut using gear other than a single line with no more than two hooks attached; or a spear.

(b) In all waters off Alaska

(1) The sport fishing season is from February 1 to December 31;

(2) The daily bag limit is two halibut of any size per day per person.

(c) In Puget Sound and United States waters in the Strait of Juan de Fuca, east of a line from Bonilla Point (latitude 48°35'44" N., longitude 124°43'00" W.) to Tatoosh Island (latitude 48°23'30" N., longitude 124°44'00" W.) to Cape Flattery (latitude 48°22'55" N., longitude 124°43'42" W.),

(1) The sport fishing seasons are

(i) May 4 to June 16, 6 days a week (Wednesday through Monday);

(ii) June 22 to June 30, 2 days a week (Saturday and Sunday).

(2) The daily bag limit is two halibut of any size per day per person.

(d) Off the North Washington coast, west of the line described in paragraph (c) of this section and north of the Queets River (latitude 47°31'42" N.),

(1) The sport fishing seasons are:

(i) May 1, 7 days a week until 55,000 pounds (25.0 metric tons) are estimated to have been taken, and a closing date has been announced by the Commission;

(ii) July 5, 2 days a week (Friday and Saturday) until 8,000 pounds (3.6 metric tons) are estimated to have been taken, and a closing date has been announced by the Commission;

(iii) August 30, 7 days a week until 1,590 pounds (.7 metric tons) are estimated to have been taken, and a closing date has been announced by the Commission, or until September 30, whichever is earlier.

(2) The daily bag limit is one halibut of any size per day per person.

(3) The total catch for the three fishing periods specified in paragraph (d)(1) of this section shall be limited to 64,590 pounds (29.3 metric tons).

(e) Off the Washington and Oregon coast, between the Queets River and Cape Falcon (latitude 45°46'00" N.)

(1) The sport fishing season is from May 1 through September 30, 7 days a week;

(2) The daily bag limit is one halibut of any size per day per person.

(f) Off the Oregon coast, between Cape Falcon and Nestucca Bay (latitude 45°09'45" N.)

(1) The sport fishing season is May 1, 7 days a week until 1,000 pounds (.5 metric tons) are estimated to have been

taken and a closing date has been announced by the Commission, or until September 30, whichever is earlier.

(2) The daily bag limit is one halibut with a minimum overall size limit of 32 inches (81.3 centimeters).

(g) Off the Oregon coast, south of Nestucca Bay

(1) The sport fishing seasons are:

(i) April 3, 4 days a week (Wednesday through Saturday) until 40,000 pounds (18.1 metric tons) are estimated to have been taken, and a closing date has been announced by the Commission;

(ii) July 15, 7 days a week in the area inside the 30-fathom curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580 and 18600, until 8,100 pounds (3.7 metric tons) are estimated to have been taken, and a closing date has been announced by the Commission;

(iii) August 27, 7 days a week until 15,012 pounds (6.8 metric tons) are estimated to have been taken and a closing date has been announced by the Commission, or until September 30, whichever is earlier.

(2) The daily bag limit is two halibut, one with a minimum overall size limit of 32 inches (81.3 centimeters) and the second with a minimum overall size limit of 50 inches (127.0 centimeters).

(3) The total catch for the three fishing periods specified in paragraph (g)(1) of this section shall be limited to 63,112 pounds (28.6 metric tons).

(h) Off the California coast:

(1) The sport fishing season is from May 15 through September 15, 7 days a week;

(2) The daily bag limit is one halibut with a minimum overall size limit of 32 inches (81.3 centimeters).

(i) Nothwithstanding paragraphs (c), (d), and (e) of this section, the total allowable catch of halibut shall be limited to 102,938 pounds (46.7 metric tons).

(j) Notwithstanding paragraphs (f), (g), and (h) of this section, the total allowable catch of halibut shall be limited to 65,812 pounds (29.9 metric tons).

(k) The minimum overall size limit specified in paragraphs (f)(2), (g)(2), and (h)(2) of this section is measured in a straight line passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail.

(l) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.

(m) The possession limit for halibut in the waters off the coast of Alaska is two daily bag limits.

(n) The possession limit for halibut in the waters off Washington, Oregon, and California is the same as the daily bag limit.

(o) Any halibut brought aboard a vessel and not immediately returned to the sea with a minimum of injury will be included in the daily bag limit of the person catching the halibut.

(p) No person shall be in possession of halibut on a vessel while fishing in a closed area.

(q) No halibut caught by sport fishing shall be offered for sale, sold, traded, or bartered.

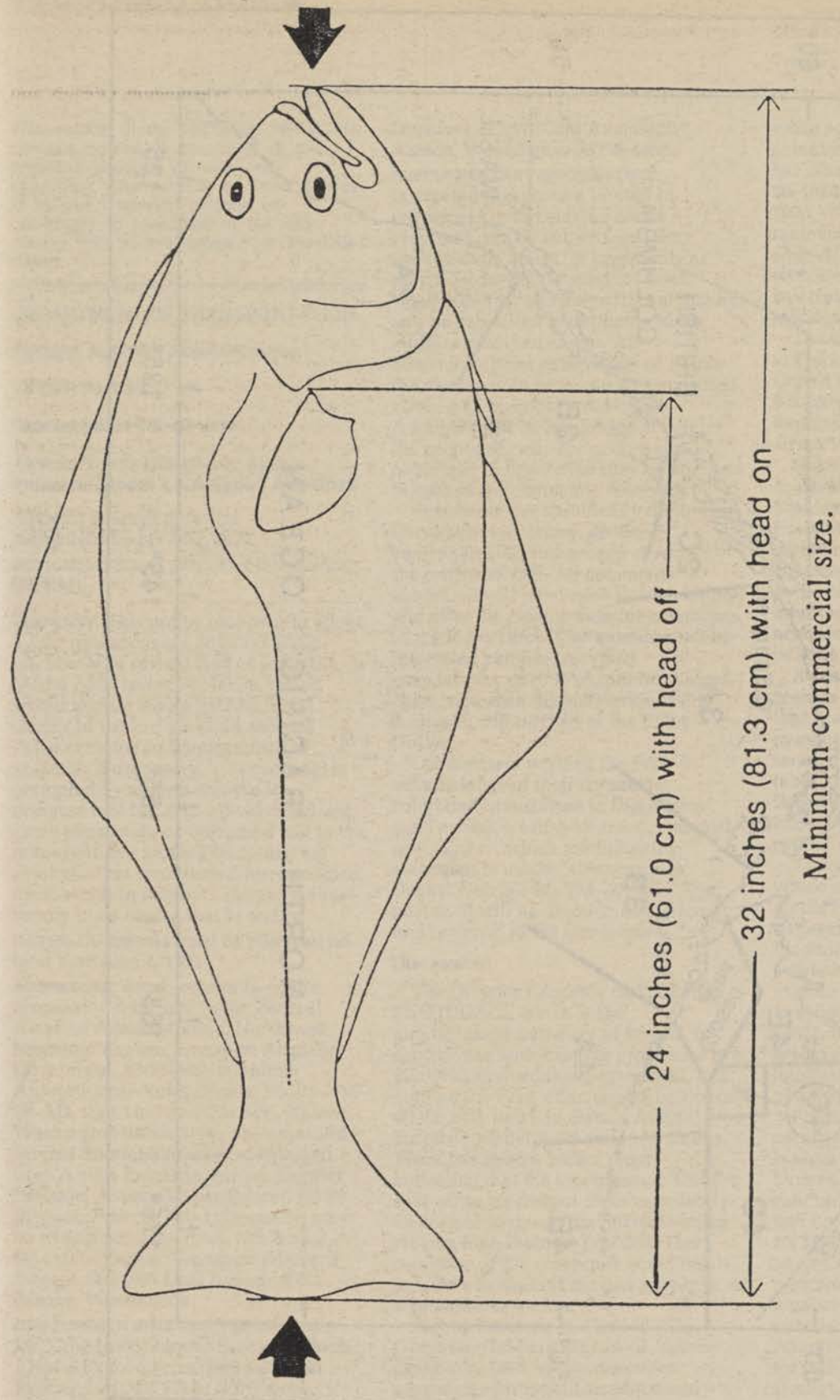
(r) No halibut caught in sport fishing shall be possessed on board a vessel when other fish or shellfish aboard the said vessel are destined for commercial use, sale, trade, or barter.

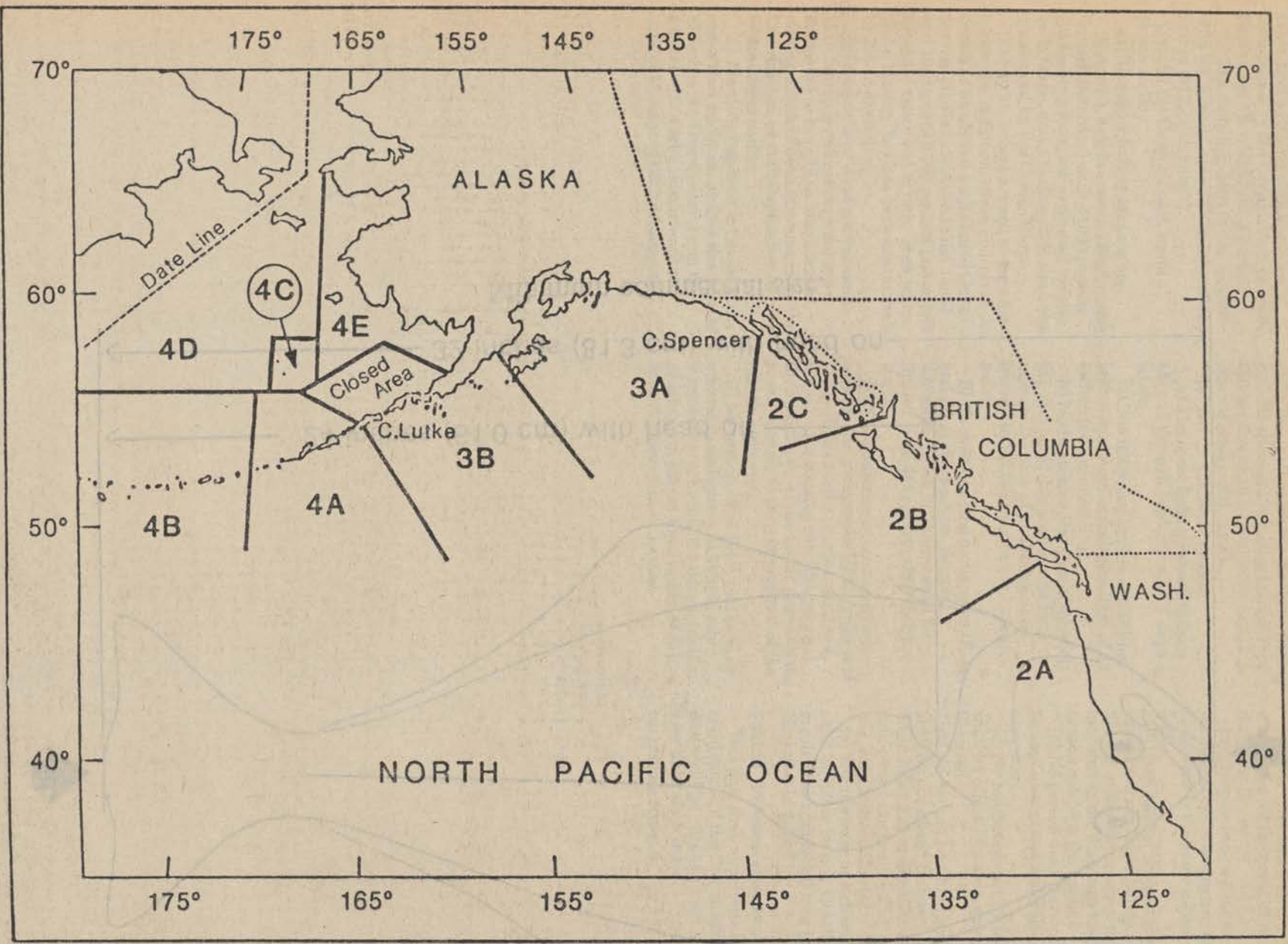
(s) The operator of a charter vessel shall be liable for any violations of these regulations committed by a passenger aboard said vessel.

§ 301.21 Previous regulations superseded.

This part shall supersede all previous regulations of the Commission, and this part shall be effective each succeeding year until superseded.

BILLING CODE 3510-22-M


24 inches (61.0 cm) with head off
32 inches (81.3 cm) with head on
Minimum commercial size.



[FR Doc. 91-9482 Filed 4-18-91; 2:55 pm]
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Proposed Rules

Federal Register
Vol. 56, No. 78
Tuesday, April 23, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-59-AD]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A320 series airplanes, which would require repetitive functional checks of the low pressure shut-off valve actuator and replacement of actuator, if necessary. This proposal is prompted by reports that the low pressure fuel fire shut-off value did not close completely on command due to the microswitches moving from their set position. This condition, if not corrected, could result in failure to shut of the fuel supply to an engine that is on fire.

DATES: Comments must be received no later than June 4, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, attention: Airworthiness Rules Docket No. 91-NM-59-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing data for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-59-AD." The post card will be dated/time stamped and returned to the commenter.

Discussion:

The Director Générale de l'Aviation Civil (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A320 series airplanes. There has been a recent report indicating that the low pressure fuel fire shut-off valve did not close completely on command due to the microswitches moving from their set position. This condition, if not corrected, could result in failure to shut off the fuel supply to an engine that is on fire.

Airbus Industrie has issued All Operators Telex (AOT) 28-01, dated October 8, 1990, which describes procedures for repetitive functional checks of the low pressure shut-off valve actuator, and replacement of actuator, if necessary. Airbus Industrie has also issued Service Bulletin A320-28-1028, Revision 1, dated November 23, 1990, which describes procedures for removal of the low pressure fuel fire shut-off valve actuator, and replacement with a modified actuator. The DGAC has classified this service bulletin as mandatory.

The airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive functional checks of the low pressure shut-off valve actuator, and replacement with a modified actuator, if necessary, in accordance with the AOT and service bulletin previously described.

It is estimated that 20 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A320 series airplanes, on which Modification 22039 has not been accomplished, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure complete closure of the low pressure fire fuel shut-off valve, accomplish the following:

A. Within 350 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 350 hours time-in-service, perform a functional check of the low pressure shut-off valve actuator, in accordance with Airbus Industrie All Operators Telex (AOT) 28–01, dated October 8, 1990.

B. If any valve fails or indicates failure on open or close correctly, prior to further flight, replace the low fuel shut-off valve actuator with a modified valve actuator (Modification 22039), in accordance with Airbus Industrie Service Bulletin A320–28, Revision 1, dated November 23, 1990. Following actuator replacement, perform a functional test in accordance with Airbus Industrie AOT 28–01, dated October 8, 1990. Accomplishment of Modification 22039 (Service Bulletin A320–28–1028) constitutes terminating action for the repetitive functional checks required by paragraph A. of this AD.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on April 4, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–9468 Filed 4–22–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–73–AD]

Airworthiness Directive; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require the inspection of the fuselage lower frames at body stations 2200 and 2220 and the adjacent structure for cracking, and repair, if necessary. This proposal is prompted by a recent report of cracks in the fuselage frames at body station 2200 and 2220. This condition, if not corrected, could lead to sudden decompression.

DATES: Comments must be received no later than June 4, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–73–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 227–2777. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–73–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Five operators of Boeing Model 747 airplanes have reported finding sixteen cracks on nine airplanes with 11,761 to 22,075 flight cycles. The shortest crack was 0.25 inch and the longest was 9.0 inches. The cracks occurred in the fuselage lower frames at body stations (BS) 2200 and 2220, adjacent to the outflow valves. The FAA has determined that these cracks were due to fatigue resulting from pressurization cycles. This condition, if not corrected, could deal to sudden decompression.

The FAA has reviewed and approved Boeing Service Bulletin 747–53–2302, dated December 13, 1990, which describes the procedures for inspecting the fuselage lower frames at BS 2200 and 2220 and the adjacent structure, and repair, if necessary.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection of fuselage lower frames at BS 2200 and 2220 and the adjacent structure for cracking, and repair, if necessary, in accordance with the service bulletin previously described.

There are approximately 713 model 747 series airplanes of the affected

design in the worldwide fleet. It is estimated that 200 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $220,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the State, or on the distribution of power and reponsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Sectioon 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747–53–2302, dated December 13, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent sudden decompression of the airplane, accomplish the following:

A. Accomplish a detailed visual inspection of the fuselage frames at body station (BS) 2200 and BS 2220, in accordance with Boeing Service Bulletin 747–23–2302, dated December 13, 1990, for evidence of cracking at the latest of the following times, as applicable. Repeat the inspections thereafter at intervals not to exceed 2,000 flight cycles.

1. Prior to the accumulation of 10,000 total airplane flight cycles; or

2. Prior to the accumulation of 10,000 flight cycles since frame replacement in accordance with Boeing Service Bulletin 747–53–2302, dated December 13, 1990; or

3. Within 1,000 flight cycles after the effective date of this AD.

B. If cracking is found as a result of the inspections required by paragraph A. of this AD, prior to further flight, perform a close visual inspection of the adjacent frames, stringers, skin, skin lap joints, and skin adjacent to the outflow valve, in accordance with Boeing Service Bulletin 747–53–2302, dated December 13, 1990, and continue to reinspect in accordance with paragraph A. of this AD.

C. If cracks are found as result of the inspections required by paragraph A. or B. of this AD, prior to further flight, repair in accordance with Boeing Service Bulletin 747–53–2302, dated December 13, 1990, and continue to reinspect in accordance with paragraph A. of this AD.

D. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then sent it to the Manager, Seattle ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this Ad.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on April 4, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–9467 Filed 4–22–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–NM–67–AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which would require repetitive inspections of the wing main tank float switch electrical conduits for trapped water, and removal of the water, if necessary. This proposal is prompted by several incidents of wing main tank float switch electrical conduit failure. This condition, if not corrected, could result in a fuel leak from the wing main tanks which could propagate down the wing leading edge cavity to the respective engine tail pipe and cause an external fire under the wing.

DATES: Comments must be received no later than June 12, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–67–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Bray, Seattle Aircraft Certification Office, Propulsion Branch, ANM–140S; telephone (206) 227–2681. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals

contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–67–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Several incidents of failure of the wing main tank float switch electrical conduit on Boeing Model 737 series airplanes have been reported recently. One incident caused an engine tail pipe fire following a normal engine shutdown at an airport terminal gate. The conduit failure has been attributed to water (condensation) building up within the conduit, collecting at a low point in the conduit, and subsequently freezing. This failure enables fuel from the wing main tank to enter the conduit and leak from the end of the conduit where it terminates at the front spar. This fuel leaks into the leading edge cavity and migrates either inboard to the engine strut, where the fuel exits through a drain hole close to the engine tail pipe, or along the lower wing surface to the engine tailpipe location. This condition, if not corrected, could result in a fuel leak from the wing main tank causing an external engine fire under the wing.

The FAA has reviewed and approved Boeing Service Letter 737–SL–28–36, dated November 30, 1990, which describes an inspection procedure to detect contaminants within the float switch electrical conduit, and removal of contaminants, if necessary. In addition, the service letter provides procedures to replace the existing grommet with a new vapor seal assembly. Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require repetitive inspections of the wing main tank float switch electrical conduit for contaminants; removal of contaminants, if found; and installation of a new vapor seal assembly to reduce the potential for water (condensation) build-up; in accordance with the service letter previously described.

This is considered to be interim action. The manufacturer is currently developing a modification that would prevent the accumulation of water (condensation) within the wing main tank float switch electrical conduit. Installation of the modification, when developed, would eliminate the need for the repetitive inspections. Once this modification is approved and available, the FAA may consider further rulemaking.

There are approximately 1,900 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 1,250 airplanes of U.S. registry would be affected by this AD. It would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Parts would be available from the manufacturer at a nominal cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $206,250.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, as listed in Boeing Service Letter 737–SL–28–36, dated November 30, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the wing main tank float switch electrical conduit and subsequent fuel leaks resulting in an engine tail pipe fire, accomplish the following:

A. Within 90 days after the effective date of this AD, and thereafter at intervals not to exceed 1,000 flight hours, perform an inspection of the wing main tank float switch electrical conduit for condensation build-up in accordance with Boeing Service Letter 737–SL–28–36, dated November 30, 1990. If water condensation is found, prior to further flight, purge and install a new vapor seal assembly in accordance with the Boeing service letter.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on April 11, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–9461 Filed 4–22–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91-NM-50-AD]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain British Aerospace Model BAC 1-11 200 and 400 series airplanes, which currently requires repetitive visual or X-ray inspections to detect corrosion in the tailplane lower skin panel and stringers, and repair, if necessary. This action would require only repetitive visual inspections to detect corrosion and cracks in the tailplane lower skin panel and stringers, and repair, if necessary. This proposal is prompted by a report of a crack found in an integral stringer of the panel, which is of the type that the (optional) X-ray inspection specified in the existing AD is not adequate to detect. This condition, if not corrected, could result in reduced structural integrity of the tailplane.

DATES: Comments must be received no later than June 4, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-50-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-50-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On April 4, 1990, the FAA issued AD 90-08-18, Amendment 39-6578 (55 FR 13756, April 12, 1990), to require repetitive visual or X-ray inspections to detect corrosion in the tailplane lower skin panel and stringers, and repair, if necessary. That action was prompted by reports that corrosion had developed internally and externally in the tailplane on some airplanes. Corrosion had affected the machined skin to a considerable depth, and, in some cases, had completely penetrated the skin in certain localized areas. This condition, if not corrected, could lead to reduced structural integrity of the tailplane.

Since issuance of that AD, there has been a report of a crack discovered on a British Aerospace Model 500 series airplane in integral stringer No. 3, initiating at the most outboard of the rivet holes at the fabricated stringer attachment at rib No. 3. The crack propagated approximately 4.5 inches outboard at rib 3, a total of approximately 6 inches. Cracks in the integral stringers cannot be detected by the X-ray means of non-destructive testing currently required by the existing AD.

British Aerospace has issued Alert Service Bulletin 55-A-PM5827, Issue No. 2, dated September 5, 1990, which describes procedures for repetitive visual inspections to detect corrosion and cracks in the tailplane bottom skin and stringers, and repair, if necessary. The United Kingdom Civil Aviation Authority (CAA) has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would supersede AD 90-08-18 with a new airworthiness directive that would require repetitive visual inspections to detect corrosion and cracks in the tailplane bottom skin and stringers, and repair, if necessary, in accordance with the service bulletin previously described.

It is estimated that 70 airplanes of U.S. registry would be affected by this AD, that it would take approximately 52 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $200,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by superseding Amendment 39–6578 (55 FR 13756, April 12, 1990), AD 90–08–18, with the following new airworthiness directive:

British Aerospace: Applies to all Model BAC 1–11 200 and 400 series airplanes on which modification PM1573 has been incorporated, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the tailplane, accomplish the following:

A. Perform the following specified initial inspections to detect corrosion and cracks in the tailplane lower skin panel and stringers:

1. Perform an external visual inspection, in accordance with British Aerospace Alert Service Bulletin 55–A–PM5827, Issue 2, dated September 5, 1990, prior to the latest of the following compliance times:

a. Within 90 days after the effective date of this AD; or

b. Within one year after the most recent external visual inspection to detect corrosion and cracks in the tailplane lower skin panel and stringer that was accomplished in accordance with AD 90–08–18, Amendment 39–6578 (British Aerospace Alert Service Bulletin 55–A–PM5827, Issue 1, dated July 24, 1981); or

c. Within ten years of the date of manufacture of the airplane.

2. Perform a detailed internal visual inspection, in accordance with British Aerospace Alert Service Bulletin 55–A–PM5827, Issue 2, dated September 5, 1990, prior to the latest of the following compliance times:

a. Within 270 days after the effective date of this AD; or

b. Within 3 years after the most recent internal visual inspection to detect corrosion and cracks in the tailplane lower skin panel and stringer that was accomplished in accordance with AD 90–08–18, Amendment 39–6578 (British Aerospace Alert Service Bulletin 55–A–PM5827, Issue 1, dated July 24, 1981); or

c. Within ten years of the date of manufacture of the airplane.

B. Repeat the inspections required by paragraph A. of this AD, at the following intervals:

1. External visual inspections must be repeated at intervals not to exceed one year.

2. Internal visual inspections must be repeated at intervals not to exceed three years.

Note: These inspections can be combined, as long as the repetitive interval indicated for each type is not exceeded.

C. If corrosion is found as a result of the visual inspection required by paragraph A. or B. of this AD, prior to further flight, accomplish the following, in accordance with the Accomplishment Instructions in British Aerospace Alert Service Bulletin 55–A–PM5827, Issue 2, dated September 5, 1990.

1. If corrosion found is within the limits specified in the Structural Repair Manual, Chapter 55–01–0, Table 1, repair the affected area and restore the protective treatment, in accordance with paragraph 2.2.1 of the service bulletin.

2. If corrosion found is outside the limits specified in the Structural Repair Manual, Chapter 55–01–0, Table 1, but has not completely penetrated the skin, repair in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

3. If corrosion found is outside the limits specified in the Structural Repair Manual, Chapter 55–01–0, Table 1, and one or more areas have completely penetrated the skin, perform an internal visual inspection of the tailplane bottom skin and stringers to establish the extent and depth of corrosion, and repair in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

D. If cracks are found, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

E. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on April 4, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–9466 Filed 4–22–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–NM–58–AD]

Airworthiness Directives; Fokker Model F–28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Fokker Model F–28 series airplanes, which would require a one-time high frequency eddy current inspection to detect cracks in the horizontal stabilizer attach fittings, and repair or replacement with a serviceable part, if necessary. This proposal is prompted by a report of a crack in the right-hand upper lug of the horizontal stabilizer attach fitting. This condition, if not corrected, could result in uncommanded movement of the horizontal stabilizer and subsequent reduced controllability of the airplane.

DATES: Comments must be received no later than June 3, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–58–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 227–2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals

contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–58–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Fokker Model F–28 series airplanes. There has been a recent report of a crack in the right-hand upper lug of the horizontal stabilizer attach fitting. The crack started at the aft edge of the bore at the inboard side and propagated for 15 mm. against the direction of flight; it had a depth in the direction of the lug bore of 7.5 mm. Further investigation revealed that the crack was caused by stress corrosion, to which the material aluminum AL7079 is known to be sensitive. This condition, if not corrected, could result in an uncommanded movement of the horizontal stabilizer and subsequent reduced controllability of the airplane.

Fokker has issued Service Bulletin F28/55–28, dated December 21, 1990, which describes procedures for a one-time high-frequency eddy current inspection to detect cracks in the horizontal stabilizer junction fittings, and repair or replacement with a serviceable part, if necessary. The RLD has classified this service bulletin as mandatory and has issued Netherlands Airworthiness Directive 91–003 addressing this subject.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require a one-time high frequency eddy current inspection to detect cracks in the horizontal stabilizer junction fittings, and repair or replacement with a serviceable part, if necessary, in accordance with the service bulletin previously described.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

It is estimated that 48 airplanes of U.S. registry would be affected by this AD, that it would take approximately 35 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $92,400.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Applies to Model F–28 series airplanes, as listed in Fokker Service Bulletin F28/55–28, dated December 21, 1990, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent uncommanded movement of the horizontal stabilizer and subsequent reduced controllability of the airplane, accomplish the following:

A. Within 90 days after the effective date of this AD, perform a high-frequency eddy current inspection to detect cracks in the horizontal stabilizer attach fittings, in accordance with Parts 1 and 2 of Fokker Service Bulletin F28/55–28, dated December 21, 1990. If cracks are found, prior to further flight, repair or replace affected attach fitting with a serviceable part, in accordance with part 3 of the service bulletin.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on April 3, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–9465 Filed 4–22–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–68–AD]

Airworthiness Directives; Fokker Model F–27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Fokker Model F–27 series airplanes, which would require a one-time high frequency eddy current inspection to detect cracks in the actuating ram attachment lug, and replacement of the main landing gear (MLG) drag strut attachment fittings, if necessary. This proposal is prompted by recent reports of broken attachment lugs on the MLG drag strut actuating rams. This condition, if not corrected, could result in collapse of the MLG.

DATES: Comments must be received no later than June 3, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–68–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 227–2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–68–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Fokker Model F–27 series airplanes. There have been recent reports of broken attachment lugs on the main landing gear (MLG) drag strut actuating rams. Further investigation of one attachment lug revealed that a crack initiated at a center punch which had been placed too close to the bore. This condition, if not corrected, could result in collapse of the MLG.

Fokker has issued Service Bulletin F27/54–47, dated November 30, 1990, which describes procedures for a one-time high frequency eddy current inspection to detect cracks in the actuating ram attachment lug, and replacement of the MLG drag strut attachment fittings, if necessary. The RLD has classified this service bulletin as mandatory, and has issued Airworthiness Directive BLA No. 90–138 addressing this subject.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require a one-time high frequency eddy current inspection to detect cracks in the actuating ram attachment lug, and replacement of the MLG drag strut attachment fittings, if necessary, in accordance with the service bulletin previously described.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

It is estimated that 44 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $48,400.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Applies to Model F–27 series airplanes; serial numbers 10102, 10105 through 10684, 10686, 10687, and 10689 through 10692; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent collapse of the main landing gear (MLG), accomplish the following:

A. Within 180 days after the effective date of this AD, or prior to the accumulation of 500 landings, whichever occurs first, perform a high frequency eddy current inspection of both sides of the actuating ram attachment lug in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F27/54–47, dated November 30, 1990.

B. If cracks are found, prior to further flight, replace the MLG drag strut attachment fitting in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/54-47, dated November 30, 1990.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on April 3, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-9462 Filed 4-22-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-63-AD]

Airworthiness Directives; Fokker Model F-28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Fokker Model F-28 Mark 0100 series airplanes, which would require replacement of the flight mode panel (FMP). This proposal is prompted by reports of changes in the FMP display values occurring without crew input, due to in-flight vibration that affects the rotary encoders. This condition, if not corrected, could result in the pilot and co-pilot receiving inaccurate flight information (heading, altitude, and vertical speed displays), which is necessary for safe operation of the airplane.

DATES: Comments must be received no later than June 3, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-63-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-63-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Fokker Model F-28 Mark 0100 series airplanes. There have been recent reports of changes in the flight mode panel (FMP) display values that have occurred without crew input. These unintended changes are due to in-flight vibration that affects the rotary encoders. This condition, if not corrected, could result in the pilot and co-pilot receiving inaccurate flight information (heading, altitude, and vertical speed displays), which is necessary for safe operation of the airplane.

Fokker has issued Service Bulletin F100-22-022, dated December 21, 1990, which describes procedures for replacement of the FMP with a modified FMP that is not subject to the addressed problems. The Fokker service bulletin references two Collins Service Bulletins for additional instructions: FMP-1000-22-03, Revision 1, dated November 6, 1990, and FMP-1000-22-04, dated March 14, 1990. The RLD has classified the Fokker service bulletin as mandatory, and has issued Netherlands Airworthiness Directive BLA No. 91-001 addressing this subject.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require replacement of the FMP with a modified FMP in accordance with the service bulletins previously described.

It is estimated that 20 airplanes of U.S. registry would be affected by this AD, that it would take approximately one manhour per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The required parts will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,100.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposa would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Applies to Model F–28 Mark 0100 series airplanes; Serial Numbers 11244 through 11300, 11303, 11306, 11308, 11310, and 11312 through 11314; certificated in any category. Compliance is required within 180 days after the effective date of this AD, unless previously accomplished.

To prevent the pilot and co-pilot from receiving inaccurate flight information, accomplish the following:

A. Remove flight mode panel (FMP) Part Number 622–7477–301, and replace it with an FMP having modifications 3 and 4 installed in accordance with Fokker Service Bulletin F100–22–022, dated December 21, 1990.

Note: The Fokker service bulletin references Collins Service Bulletins FMP–1000–22–03, Revision 1, dated November 6, 1990, and FMP–1000–22–04, dated March 14, 1990, for modification instructions.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue S.W., Renton, Washington.

Issued in Renton, Washington, on April 3, 1991.

Darrell M. Pederson,

Acting Manager Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 91–9463 Filed 4–22–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–64–AD]

Airworthiness Directives; Fokker Model F–28 Mark 0100 Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Fokker Model F–28 Mark 0100 series airplanes, which would require a revision to the Limitations Section of the Airplane Flight Manual to prohibit the use of the FLEX mode until the multifunction display units (MFDU) have been replaced. This proposal is prompted by reports that the engine pressure ratio target is set too low, due to the current parameters programmed in the MFDU. This condition, if not corrected, could result in failure to achieve climb performance and reduction of obstacle clearance margins.

DATES: Comments must be received no later than June 3, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–64–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 227–2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue S.W., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–64–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Fokker Model F–28 Mark 0100 series airplanes. There has been a recent report indicating that the engine pressure ratio (EPR) target on these airplanes is set too low when selecting FLEX takeoff mode, due to the current parameters programmed in the multifunction display units (MFDU); this setting results in the engine thrust being too low. This condition, if not corrected, could result in failure to achieve climb performance and reduction of obstacle clearance margins.

Fokker has issued Service Bulletin F100–31–017, dated December 12, 1990, which describes procedures for

replacement of the MFDU's with modified MFDU's having new software installed that eliminates the addressed problems. The Fokker service bulletin references Collins Service Bulletin DU-1000A-34-10, Revision 1, dated July 24, 1990, for additional instructions. The RLD has classified the Fokker service bulletin as mandatory, and has issued Netherlands Airworthiness Directive BLA No. 90-041, Issue 3, addressing this subject.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist on other airplanes of the same type design registered in the United States, an AD is proposed which would require a revision to the Limitations Section of the FAA-approved Airplane Flight Manual to prohibit the use of the FLEX mode until the multifunction display units have been replaced in accordance with the service bulletins previously described.

It is estimated that 20 airplanes of U.S. registry would be affected by this AD. It would take approximately 1 manhour per airplane to accomplish the required AFM changes and 1 manhour to accomplish the required replacement. The average labor cost would be $55 per manhour. The cost for required parts is negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Applies to Model F-28 Mark 0100 series airplanes; Serial Numbers 11244 through 11306, 11308, 11310, and 11312 through 11314; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent failure to achieve climb performance and reduction of obstacle clearance margins, accomplish the following:

A. Within 10 days after the effective date of this AD, accomplish the following:

1. Delete all references to FLEX takeoff from Section 2, Limitations Section of the FAA-approved Airplane Flight Manual (AFM); specifically, Sections 2.02.02 "General Limitations" and 2.06.01 "Power Plant and APU Limitations;" and

2. Add the following to the Limitations Section of the FAA-approved AFM; specifically, Section 2.06.01, "Power Plant and APU Limitations", subsection "Thrust Rating Panel." This may be accomplished by inserting a copy of this AD in the AFM.

Use of Flex Takeoff Is Not Approved

B. Within one year after the effective date of this AD, replace the multifunction display units (MFDU), Part Number (P/N) 622-8047-401, with P/N 622-8047-411, in accordance with Fokker Service Bulletin F100-31-017, dated December 12, 1990, and Collins Service Bulletin DU-1000A-34-10, Revision 1, dated July 24, 1990. Following replacement of the MFDU's, prior to further flight:

1. Add all references to the FLEX takeoff section that were removed from the Limitations Section of the FAA-approved Airplane Flight Manual in accordance with paragraph A.1. of this AD; and

2. Remove the limitations that were required by paragraph A.2. of this AD.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Avionics Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on April 3, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-9464 Filed 4-22-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-91-3245; FR-3011-N-02]

Section 8 Housing Assistance Payments Program—Fair Market Rent Schedules for Use in the Existing Housing Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Housing Voucher Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed fair market rents; Correction.

SUMMARY: On April 11, 1991 (56 FR 14732), the Department published the proposed FY 1992 Fair Market Rents (FMRs) for the section 8 Existing Housing Certificate Program (part 882, subparts A and B), including space rentals by owners of manufactured homes under the section 8 Existing Housing Certificate Program (part 882, subpart F); the section 8 Moderate Rehabilitation Program (part 882,

subparts D and E); and section 8 Existing Housing assisted under part 886, subparts A and C (section 8 Loan Management and Property Disposition Programs); and the payment standard schedules in the Housing Voucher Program. The purpose of this document is to correct the proposed FMRs for the Pittsburgh, PA PMSA.

FOR FURTHER INFORMATION CONTACT: Michael R. Allard, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708–0577. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Market Rents (FMRs) periodically, but not less frequently than annually, to be effective October 1 of each year. The Department's regulations at 24 CFR part 888 provide a notice and comment process for developing FMRs. On April 11, 1991 (56 FR 14732), the Department published the proposed FY 1992 FMRs for the section 8 Existing Housing Certificate Program (part 882, subparts A and B), including space rentals by owners of manufactured homes under the section 8 Existing Housing Certificate Program (part 882, subpart F); the section 8 Moderate Rehabilitation Program (part 882, subparts D and E); and section 8 Existing Housing assisted under Part 886, subparts A and C (section 8 Loan Management and Property Disposition programs); and the payment standard schedules in the Housing Voucher Program. The FMRs for the Pittsburgh, PA PMSA were incorrect.

Accordingly, the following correction is being made in FR Doc. 91–8347, in the **Federal Register** issue of Thursday, April 11, 1991 (56 FR 14732), to read as follows:

On page 14773, in Schedule B, in the 32nd line down from the top of the page, under the heading "Metropolitan Statistical Areas" for the State of Pennsylvania, correct the FMRs for an efficiency unit from "319" to read "297"; for a one-bedroom unit from "387" to read "360"; for a two-bedroom unit from "456" to read "425"; for a three-bedroom unit from "570" to read "531"; and for a four-bedroom unit from "639" to read "594".

Dated: April 17, 1991.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 91–9446 Filed 4–22–91; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286b

[OSD Administrative Instruction No. 81]

Privacy Program

AGENCY: Office of the Secretary of Defense (OSD).

ACTION: Proposed exemption rule.

SUMMARY: The Office of the Secretary of Defense proposes to add a new specific exemption rule for a new system of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a). The system of records is identified as DODDS 25.0, entitled, "DoDDS Internal Review Office Project File."

DATES: Comments must be received on or before May 23, 1991.

ADDRESSES: Forward any comments to Mr. Dan Cragg, Chief, Records Management and Privacy Act Branch, Office of the Secretary of Defense, Room 5C315, The Pentagon, Washington, DC 20301–1155. Telephone (703) 695–0970.

SUPPLEMENTARY INFORMATION: The establishment of a new system of records subject to 5 U.S.C. 552a, has been proposed by the Department of Defense Dependents Schools. The Internal Review Office of DoDDS was established to perform a range of financial monitoring and oversight functions for the world-wide Dependents Schools operation. A specific exemption is required to protect from disclosure certain criminal investigation records maintained in the new record system by the Internal Review Office. This proposed specific exemption rule is to be added to existing OSD exemption rules found at 32 CFR 286b.7. Also, the record system identification of an existing exemption rule is changed from DMRA&L to DODDS to reflect the new designation.

List of Subjects in 32 CFR Part 286b

Privacy.

Accordingly, the Department of Defense proposes to amend 32 CFR part 286b as follows:

PART 286b—PRIVACY PROGRAM

1. The authority citation for 32 CFR part 286b continues to read as follows:

Authority: Privacy Act of 1974, Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 286b.7 is proposed to be amended by adding paragraph designation (6) before SYSID–DMRA&L 02.0, SYSNAME. Educator Application Files, revising newly redesignated (c)(6) introductory text, and adding a new paragraph (c)(7) as follows:

§ 286b.7 Procedures for exemption.

* * * * *

(c) *Specific exemptions.* * * *

(6) DoDDS 02.0, Educator Application Files.

* * * * *

(7) DODDS 25.0, DoDDS Internal Review Office Project File.

Exemption—Portions of this system that fall within the provisions of 5 U.S.C. 552a(k)(2) are exempt from the following subsections (c)(3), (d), (e)(4)(G), (e)(4)(H), and (f).

Authority: 5 U.S.C. 552a(k)(2).

Reasons—From subsection (c)(3) because the release of a disclosure accounting would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by cooperating agencies. This would greatly impede the IRO's criminal law enforcement effectiveness.

From subsections (e)(4)(G) and (e)(4)(H), because notification would alert a subject to the fact that an investigation of that individual is taking place, and might weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy.

From subsection (d) and (f), because access to records and agency rules for access and amendment of records unfairly impede the DoDDS IRO criminal investigation activities. Requiring DoDDS IRO to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going criminal investigation. The conduct of a successful investigation leading to the indictment of a criminal offender would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures, as normally apply under the requirements of 5 U.S.C. 533(b)(1), (2), and (3), (c) and (e).

* * * * *

Dated: March 27, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–8936 Filed 4–22–91; 8:45 am]

BILLING CODE 3810–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-103, RM-7466, RM-7471, RM-7474]

Radio Broadcasting Services; Rochester, Minnesota, Clear Lake & Osage, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document is issued in response to three separately filed, conflicting petitions. Faith Sound, Inc., permittee of noncommercial educational station KFSI-FM, requests the substitution of Channel 225A for Channel *203 at Rochester, Minnesota, reservation Channel 225A for noncommercial educational use, and modification of the construction permit for Station KFSI-FM to specify Channel *225A. Jay Lellman proposes the allotment of Channel 225A to Rochester, Minnesota, as that community's fifth FM broadcast service. Mad Hatter Broadcasting, Inc., licensee of FM Station KLKK(FM), proposes the substitution of Channel 279C3 for Channel 276A at Clear Lake, Iowa, and modification of the license for Station KLKK(FM) to specify operation on Channel 279C3 in accordance with Commission Rule 1.420(g). To accommodate Channel 279C3 at Clear Lake, Mad Hatter Broadcasting proposes the substitution of Channel 225A for Channel 279A at Osage, Iowa, and modification of the license for Station KCZY to specify Channel 225A. See Supplemental Information, *infra*.

DATES: Comments must be filed on or before June 10, 1991, and reply comments on or before June 25, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Robert S. Stone, McCampbell & Young, 800 South Gay Street, Knoxville, Tennessee 37929, (Counsel for Faith Sound, Inc.)

Jay Lellman, P.O. Box 1307, Eau Claire, Wisconsin 54702.

John S. Neely, Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033, (Counsel for Mad Hatter Broadcasting, Inc.)

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-103, adopted March 28, 1991, and released April 17, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

The coordinates for Channel *225A at Rochester are 44-01-30 and 92-31-30. There is a site restriction 4.1 kilometers west of Rochester for Channel 225A at coordinates 44-01-02 and 92-30-50. The coordinates for Channel 279C3 at Clear Lake are 42-59-54 and 93-17-44. The coordinates for Channel 225A at Osage are 43-19-20 and 92-51-22.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-9404 Filed 4-22-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-106, RM-7671]

Radio Broadcasting Services; Ocracoke, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Hurricane Communications seeking the allotment of Channel 225A to Ocracoke, North Carolina, as its first local FM service. Channel 225A can be allotted to Ocracoke in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for Channel 225A at Ocracoke are North Latitude 35-06-52 and West Longitude 75-58-53. Petitioner is requested to provide further information demonstrating that Ocracoke is a community for allotment purposes.

DATES: Comments must be filed on or before June 10, 1991, and reply comments on or before June 25, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Toni T. Rinehart, 2557-E Mountain Lodge Circle, Birmingham, Alabama 35216 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-106, adopted March 28, 1991, and released April 17, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-9403 Filed 4-22-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-105, RM-7677]

Radio Broadcasting Services; Socastee, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Puritan Radiocasting Company seeking the substitution of Channel 258C3 for Channel 258A at Socastee, South Carolina, and the modification of its construction permit to specify operation on the higher powered channel. Petitioner is requested to state its intention to apply for Channel 258C3 in comments. Channel 258C3 can be allotted to Socastee in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.4 kilometers (6.5 miles) east to avoid a short-spacing to the proposed allotment of Channel 257C3 at Kingstree, South Carolina, and to accommodate petitioner's desired transmitter site. The coordinates for Channel 258C3 at Socastee are North Latitude 33-42-20 and West Longitude 78-53-23.

DATES: Comments must be filed on or before June 10, 1991, and reply comments on or before June 25, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ronald D. Rackley, Partner, Puritan Radiocasting Company, 6211 Hillview Avenue, Alexandria, Virginia 23310 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-105, adopted March 28, 1991, and released April 17, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-9406 Filed 4-22-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-107, RM-7640]

Radio Broadcasting Services; Huntingdon and Atwood, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by WJPJ, Inc., permittee of Station WBVD(FM), Channel 229A, Huntingdon, Tennessee, seeking the reallotment of Channel 229A to Atwood, Tennessee, and modification of petitioner's authorization to specify Atwood as the station's community of license. Channel 229A can be allotted to Atwood in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.8 kilometers (3.0 miles) south of the community to accommodate the petitioner's desired transmitter site. The coordinates for Channel 229A at Atwood are North Latitude 35-56-00 and West Longitude 88-40-00. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 229A at Atwood or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before June 10, 1991, and reply comments on or before June 25, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Frank R. Jazzo, Esq., Fletcher, Heald & Hildreth, suite 400, 1225 Connecticut Avenue, Washington, DC 20036-2679 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumental, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-107, adopted March 28, 1991, and released April 17, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-9408 Filed 4-22-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-104, RM-7668]

Radio Broadcasting Services; Sun Prairie and Mauston, WI, and Freeport, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a proposal filed by First Choice Communications, Inc., requesting the substitution of Channel 221B1 for Channel 221A at Sun Prairie, Wisconsin, and modification of the license for Station WMAD-FM accordingly. The coordinates for Channel 221B1 are 43-12-30 and 89-26-30. To accommodate

the Sun Prairie upgrade, petitioner has proposed the substitution of Channel 275A for Channel 221A at Mauston, Wisconsin, and modification of the license for Station WRJC–FM to specify the new channel, and substitution of Channel 295A for Channel 221A at Freeport, Illinois, and modification of the license for Station WFPS accordingly. The coordinates for Channel 275A at Mauston are 43–47–16 and 90–11–52. The coordinates for Channel 295A at Freeport are 42–19–41 and 89–43–32.

DATES: Comments must be filed on or before June 10, 1991, and reply comments on or before June 25, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lawrence Bernstein, Bring & Bernstein, 1818 N Street, NW., suite 200, Washington, DC 20036, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–104, adopted March 28, 1991, and released April 17, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR Section 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–9405 Filed 4–22–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89–18; Notice 5]

RIN: 2127–AD75

Federal Motor Vehicle Safety Standards; Glazing Materials

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Supplementary notice of proposed rulemaking.

SUMMARY: The purpose of this notice is to propose an amendment to Standard No. 205, *Glazing Materials*, to permit a new item of glass-plastic glazing. Item 15B, Tempered glass-plastic glazing, is proposed to be used anywhere in a motor vehicle, excluding the windshield. The new item of glazing is a less restrictive version of existing Item 14 glass-plastic glazing, which may be used anywhere in a motor vehicle, including the windshield.

This notice also requests further comment (to supplement the comments received in response to an October 1989 proposal) on the issue of whether Test No. 1, Light Stability, should be deleted for Item 3 glazing.

DATES: Comments must be received on or before June 24, 1991.

ADDRESSES: All comments should refer to the docket number and notice number of this notice and be submitted, preferably in ten copies, to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Clarke Harper, Office of Vehicle Safety Standards, NRM–12, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Mr. Harper's telephone number is (202) 366–2264.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 205, *Glazing Materials* (49 CFR 571.205), specifies performance requirements for the types of glazing that may be used in motor vehicles. It also specifies the vehicle locations in which the various types of glazing may be used. The standard incorporates, by reference, American National Standard Institute (ANSI) Standard 226.1, "Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," as amended through 1980 (ANS Z26). The requirements in ANS Z26 are specified in terms of performance tests that the various types or "items" of glazing must pass. There are 14 "items" of glazing for which requirements are currently specified in Standard No. 205.

On October 11, 1989 (54 FR 41632), NHTSA Issued a notice of proposed rulemaking (NPRM) proposing to amend Standard No. 205, by permitting three new Items of glass-plastic glazing. Item 15, Annealed glass-plastic glazing, was proposed to be permitted anywhere in a motor vehicle except the windshield. Item 16A, Annealed glass-plastic glazing and Item 16B, Tempered glass-plastic glazing, were proposed to be used in areas not requisite for driving visibility. The agency did not propose to permit a tempered version of Item 15 glazing because it believed that when shattered, the dicing effect of tempered glass in glass-plastic glazing tends to obstruct vision, since the plastic tends to hold the diced pieces in place. This tends to affect safety adversely by limiting visibility when such glazing is used in windows that are requisite for driving visibility. The agency requested comments on this issue. NHTSA also proposed several technical changes to Standard No. 205, including deleting Test No. 1 for Item 3 glazing.

A companion notice, published in the same Issue of the **Federal Register** as this notice, adopts the three new items of glass-plastic glazing, 15A (which was called Item 15 in the NPRM), 16A, and 16B, proposed in the October 1989 NPRM, and one of the proposed technical changes. As discussed below, after considering the public comments, NHTSA has now tentatively concluded that a tempered version of Item 15 glazing should be permitted. This notice proposes to permit a new Item 15B, Tempered glass-plastic glazing, for all areas requisite for driving visibility except the windshield. This notice also requests further public comments on the Issue of deleting Test No. 1 for Item 3 glazing.

Item 15B Glazing

Although the commenters on the October 1989 NPRM did not disagree that the dicing effect that occurs when tempered glass-plastic glazing is shattered would obscure vision, none of

the commenters believed that concerns about such possible obscuration would outweigh benefits that would be had from glass-plastic glazing in the rear and side windows. Most of the commenters suggested the creation of an Item 15B, Tempered glass-plastic glazing for areas requisite for driving visibility, other than the windshield.

Saint-Gobain Vitrage International (SGV) and Morton International (Morton) expressed the opinion that side breakage is most common during burglary attempts when the motor vehicle is parked, and driving visibility is not an issue. Ford Motor Company (Ford) and General Motors expressed the opinion that some sideward transparency would still remain in a tempered glass-plastic window even after breakage.

Addressing other safety concerns, SGV stated that for tempered glass plastic, the dicing effect of the broken glass is beneficial since it helps energy absorption. Only the exposed plastic around the cracks acts as an energy absorber. The plastic still bonded to the glass pieces does not absorb energy. Since, when shattered, tempered glass tends to result in more cracks than annealed glass, there would be less of the plastic that would be bonded to the glass pieces, and it would better help absorb energy than annealed glazing. This is significant since, in the event of a head contact, the greater the amount of plastic that has separated from the glass along the crack, means more energy had been used in separating the plastic from the glazing, and less energy would be available to be transferred to the head. SGV further stated that the plastic on tempered glass will not tear as readily as plastic does on annealed glass. This is apparently due to the longer continuous sharp glass edges on broken annealed glass.

Regarding other benefits to be had from tempered glass, Ford expressed the opinion that the extra protection against lacerations afforded by the dicing of tempered glass when broken and the greater strength of tempered glass which militates against its breakage in day to day use (due to door slamming, wind and hail damage, and vehicle road shocks) outweigh whatever impairment in the driver's sideward vision may be created when tempered glass plastic glazing is broken. Both SGV and Morton emphasized that tempered glass is more appropriate than annealed glazing because it is stronger. Because annealed glass is more fragile than tempered glass, the technical costs (of increased reinforcement) and warranty costs (for more frequent replacement) for annealed glass-plastic would be much higher. Vehicle designers would, therefore, be discouraged from using annealed glass plastic, and would choose the traditional Item 2 monolithic tempered glass.

The commenters argued that in crashes, tempered glass-plastic glazing would be safer than annealed glass-plastic. As has been discussed above, the issue of visibility in the event of the tempered glass plastic shattering was discussed in the October 1989 NPRM. The discussion is bolstered by the public comments presented in another rulemaking to amend Standard No. 205. This rulemaking amended Test No. 26 of the ANS Z26 standard to specify clamping when Item 14 glass-plastic glazing is tested. (See 56 FR 12669; March 27, 1991.) In the NPRM for the Test No. 26 rulemaking (54 FR 41636, October 11, 1989), the agency had proposed to amend Standard No. 205 to prohibit glass "that is strengthened by any method" from being used in "glass-plastic glazing in any windshield or other location requisite for driving visibility." (See 49 FR at 41641.) After reviewing the comments in the Test No. 26 rulemaking, the agency stated that it has reconsidered its former position that use of tempered glass in laminated glass-plastic glazing could seriously compromise visibility when rear and side windows made of plastic glazing is broken. The agency now believes that the above described benefits that may be derived from use of tempered glass-plastic glazing outweigh concerns over its potential for more crashes as a result of lessened visibility through broken side and rear glazing.

Accordingly, NHTSA is proposing in this notice to permit a new Item 15B, tempered glass-plastic glazing, for all locations that are requisite for driving visibility, other than the windshield.

Test 1 for Item 3 Glazing

In the October 1989 NPRM, the agency had also proposed that ANS Z26 standard's Test No. 1, Light Stability, that measures visual deterioration of glazing due to exposure to sunlight and humidity, be deleted for glazing that is used in areas that are not requisite for driving visibility. The agency proposed this deletion for Item 3 glazing, which is used in areas not requisite for driving visibility. The agency's rationale for this proposal was that since the test measured visual deterioration of the glazing due to exposure to sunlight and humidity, there was no safety need to measure possible visual deterioration in areas not requisite for driving visibility.

The comments, especially from glazing manufacturers, were mixed, with PPG Industries and Flachglas Aktiengesellschaft in favor of the deletion, and Libbey Owens Ford (LOF) opposed to it. LOF noted that the proposal appeared to presume that the test only monitors the light transmittance of the products. LOF stated that a change in light transmittance can also indicate interlayer deterioration. LOF warned that even though presently used polyvinyl butyral (PVB) undergoes very little, if any, decomposition, elimination of this test for laminated or glass-plastic glazing may in the future allow plastics that have inferior weathering characteristics, and thus allow production of glazing products that may have long range safety and reliability problems. LOF, however, did not specify what some of these problems may be.

The agency believes that the new issues raised by the commenters on the utility of Test 1 for Item 3 may have merit. Accordingly, to be certain that an opportunity for a full discussion of the issues has been provided, In this SNPRM, the agency is again requesting public comment, especially on the issues raised by LOF, and for documentation of the type of safety problems that may arise from using plastics that would fail Test No. 1.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of Department of Transportation regulatory policies and procedures. The agency has determined that the economic and other impacts of this rule, if implemented, would be so minimal that a full regulatory evaluation is not required. The agency believes that the impacts would be minimal because the proposed item of glazing is to be used at the option of motor vehicle manufacturers. Because use of the new item of glazing would be voluntary, if the new item of glazing is approved, no new costs would be imposed on motor vehicle manufacturers, or on manufacturers of motor vehicle glazing. In addition, the agency believes that if made final, the proposed deletion of Test 1 from Item 3 glazing would very slightly lessen costs on manufacturers. Public comment is invited on the likely costs and benefits that would be associated with this rulemaking.

Regulatory Flexibility Act

The agency has also considered the effects of this rulemaklng under the Regulatory Flexibility Act (5 U.S.C. 6Ol *et seq.*). I certify that this proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule would have no significant effect even if all of the motor vehicle manufacturers or manufacturers of of motor vehicle glazing in the United States were considered as small businesses or other small entitles. The rationale for this certification is that this proposed rule would impose no requirements on small businesses but would allow new glazing materials to be used at the option of motor vehicle manufacturers.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. It has been determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this proposed rule and has determined that if adopted as a final rule, it would not have a significant impact on the quality of the human environment.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that lO copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain Information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaklng action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, it is proposed that Federal Motor Vehicle Safety Standard No. 205, *Glazing materials* (49 CFR part 571), be amended as set forth below:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.205, a new sentence would be added at the end of S5.1.1.7, a new S5.1.2.6 would be added, and S5.1.2.10 and the second sentence of S6.1 would be revised to read as follows:

§ 571.205 Standard No. 205, Glazing Materials.

* * * * *

S5.1.1.7 * * *

Test No. 1 is deleted from the lists of tests specified in ANS Z26 for Item 3 glazing material.

S5.1.2.6 *Item 15B—Tempered Glass-Plastic For Use In All Positions In A Vehicle Except the Windshield.* Glass-plastic glazing materials that comply with Tests Nos. 1, 2, 3, 4, 6, 7, 8, 16, 17, 18, 19, 24, and 28, as those tests are modified in S5.1.2.9 *Test Procedures for Glass-Plastics,* may be used anywhere in a motor vehicle except the windshield, and may not be used in convertibles, in vehicles that have no roof or in vehicles with roofs that are completely removable.

* * * * *

S5.1.2.10 *Cleaning instructions.*

(a) Each manufacturer of glazing materials designed to meet the requirements of S5.1.2.1, S5.1.2.2, S5.1.2.3, S5.1.2.4, S5.1.2.5, S5.1.2.6, S5.1.2.7, or S5.1.2.8 shall affix a label, removable by hand without tools, to each item of such glazing material. * * *

(b) Each manufacturer of glazing materials designated to meet the requirements of paragraphs S5.1.2.4, S5.1.2.5, S5.1.2.6, S5.1.2.7, or S5.1.2.8 may permanently and indelibly mark the lower center of each item of such glazing material, in letters not less than 3⁄16 inch nor more than ¼ high, the following words, GLASS PLASTIC MATERIAL—SEE OWNER'S MANUAL FOR CARE INSTRUCTIONS.

* * * * *

S6.1 * * * The materials specified in S5.1.2.1, S5.1.2.2, S5.1.2.3, S5.1.2.4, S5.1.2.5, S5.1.2.6, S5.1.2.7, and S5.1.2.8 shall be identified by the marks "AS 1 1 C", "AS 12", "AS 13", "AS 14", "AS I 5A", "AS 15B", "AS 16A", and "AS 16B", respectively. * * *

* * * * *

Issued on: April 10, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-8853 Filed 4-22-91; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 572

[Docket No. 74-14; Notice 45]

RIN 2127-ACI2

Anthropomorphic Test Dummies; Hybrid III Test Dummy

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking proceeding.

SUMMARY: The purpose of this notice is to terminate rulemaking regarding amendments to Standard No. 208, Occupant Crash Protection, adding injury criteria for facial lacerations, neck injuries, and knee-tibia injuries. These intentions were noted in a final rule issued on July 25, 1986 (51 FR 26688). However, research conducted to date has not yielded adequate information to initiate further rulemaklng. Although the agency is continuing its biomechanic and test dummy development programs, it does not appear that the agency will be able

to obtain the needed information in the near future.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley H. Backaitis NRM-12, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: (202) 366-4912.

SUPPLEMENTARY INFORMATION: In December 1983, General Motors (GM) petitioned the agency to amend Part 572, *Anthropomorphic Test Dummies*, to adopt specifications for the Hybrid III test dummy. GM also petitioned for an amendment to Standard No. 208, *Occupant Crash Protection*, to allow the use of Hybrid III as an alternative test device for compliance testing. The agency granted GM's petition on July 20, 1984.

Subsequently, the agency received a petition from the Center for Auto Safety requesting that Standard No. 208's existing injury criteria be made more stringent for the Hybrid III. The Center also petitioned the agency to establish new injury criteria so as to take advantage of the Hybrid III's superior measurement capability. The agency granted the Center's petition on September 17, 1984.

On April 12, 1985, NHTSA proposed amendments to Part 572 and Standard No. 208 that were responsive to both petitioners and which, in the agency's judgment, would enhance motor vehicle safety (50 FR 14602). On July 25, 1986, after reviewing the comments received in response to this notice, NHTSA adopted the use of the Hybrid III test dummy and some of the proposed injury criteria. (51 FR 26688).

Comments addressed to the remaining injury criteria raised a number of objections regarding their practicability, variability of the test data, capability of the existing data processing equipment, need for additional data about the effectiveness of countermeasures, and lack of evidence about the relationship between actual injury levels and the proposed injury criteria. Upon review of these comments, the agency determined that it did not have sufficient technical data and technology to support the inclusion of additional injury criteria for facial lacerations, neck injuries, and knee-tibia injuries. The agency decided that resolution of the various issues regarding these supplementary injury criteria would have to be accomplished through further research and development. Based on that work, NHTSA contemplated issuing another notice on the remaining injury criteria to gain additional information about the potential effects of adopting those criteria (51 FR 26688).

Research conducted to date by the agency, regarding the development of data needed to support this rulemaking, has not yielded adequate information to initiate further rulemaking. The findings indicate that existing technology to assess injury in the areas of facial laceration, neck injuries, and knee-tibia injuries, while appropriate for research and subjective comparison purposes, is still short of being useful for compliance application. In some instances, correlations between the dummy measurements and the injury mechanisms, as well as the risk of injury, are still to be established. In addition, the agency has not noted or been advised of technical progress in the private sector that would facilitate the development of additional rulemaking.

Development of these injury criteria will require considerable time and research effort. Due to other research priorities, and the time and resources required, the agency will not complete the research necessary to develop these additional injury criteria in the near future. After the announcement in 1986 of the possibility of additional rulemaking, the agency had to divert most of its technical talent and resources from this program toward the development of the side impact regulation and also the resolution of the Hybrid III related chest deflection issue. Both of those activities are expected to continue. Accordingly, the agency is announcing the termination of rulemaking regarding the areas of facial lacerations, neck injuries, and knee-tibia injuries.

Issued on April 17, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-9411 Filed 4-22-91; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 56, No. 78
Tuesday, April 23, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Casa-Guard Timber Sale, Sequoia National Forest; CA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) for a proposal to harvest and regenerate timber in the Casa-Guard timber sale area on the Cannell Meadow Ranger District, Sequoia National Forest, Tulare County, California.

DATES: To be most helpful in the preparation of the Draft EIS, comments should be received in writing by May 20, 1991.

ADDRESSES: Submit written comments and suggestions to Gene Blankenbaker, District Ranger, Cannell Meadow Ranger District, P.O. Box 6, Kernville, California 93238.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Norman Nass, District Silviculturist or to Sue Porter, Sale Planner, Cannell Meadow Ranger District, P.O. Box 6, Kernville, California 93238, telephone (619) 376–3781.

SUPPLEMENTARY INFORMATION: The Casa-Guard Timber Sale is planned to occur over approximately 13,470 acres of National Forest land extending from Blackrock Station in the southeast, to the vicinity of Lion Meadow in the southwest and to the Forest boundary on the north end; it includes parts of Townships 20 and 21 South, and Ranges 34 and 35 East, Mount Diablo Meridian. In December of 1989, a Decision Notice and Finding of No Significant Impact (FONSI) was issued for the completed Environmental Assessment (EA). This Decision Notice and FONSI were administratively appealed in January 1990, then subsequently litigated in October of 1990. This EIS is being prepared by the Forest Service in response to the settlement of the litigation.

A range of alternatives for the project area will be considered. One of these will be the no action alternative. Other alternatives will consider development of transportation systems, application of harvest methods and silvicultural treatments, opportunities for resources other than timber, and post timber sale silvicultural treatments.

James A. Crates, Forest Supervisor, Sequoia National Forest is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a previous environmental review.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

A public scoping meeting will be held at the Kernville Elementary School, Kernville, California at 7 p.m., Wednesday, May 8, 991.

The draft EIS (DEIS) is expected to be filed with the Environmetal Protection Agency (EPA) and to be available for public review by September 1991. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register.**

The comment period on the DEIS will be 45 days from the date that EPA's Notice of Availability appears in the **Federal Register.** It is very important that those interested in the management of the area encompassed by the proposed Casa-Guard Timber Sale participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage, but that are not raise until after completion of the final EIS may be waived or dismissed by the courts, *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS shall be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the DEIS. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement.

After the comment period for the draft EIS ends, the comments received will be analyzed and considered by the Forest Service in the preparation of the Final EIS. The final EIS is scheduled to be completed by January 1992.

Dated: April 12, 1991.

James A. Crates,

Forest Supervisor.

[FR Doc. 91–9419 Filed 4–22–91; 8:45 am]

BILLING CODE 3410–11–M

Development of Specific Standards and Guidelines for Rangeland Ecosystem Management to Amend the Uinta National Forest Land and Resource Management Plan, Utah

AGENCY: Uinta National Forest, USDA; Juab, Sanpete, Tooele, Utah, and Wasatch Counties, UT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare a programmatic environmental impact statement for the purpose of amending rangeland ecosystem management direction in the Uinta National Forest Land and Resource Management Plan. The goal of this Forest Plan amendment is to lay the necessary foundation for management of rangeland ecosystems and to comply with National Environmental Policy Act (NEPA) regulations for the future improvement of unsatisfactory rangeland conditions on the Uinta National Forest. The EIS is intended to increase public awareness and disclose Forest Service responses to issues involving wetlands, flood plains, riparian areas, and other critical habitats used by domestic livestock and wildlife. The Uinta National Forest Land and Resource Management Plan was approved on October 3, 1984.

DATES: To be most effective, comments concerning the analysis and the scope of the action should be received by May 22, 1991.

ADDRESSES: Written comments and suggestions concerning the analysis should be sent to the Forest Supervisor at the Uinta National Forest, P.O. Box 1428, 88 West 100 North, Provo, Utah, 84602.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Dave Griffel, Spanish Fork Ranger District, 44 West 400 North, Spanish Fork, Utah 84660, telephone (801) 798–3571, or Norm Huntsman, Uinta National Forest Supervisor's Office, 88 West 100 North, Provo, Utah 84601, telephone (801) 377–5780.

SUPPLEMENTAL INFORMATION: Direction established in the amendment will guide management activities and establish management standards and guidelines for achieving the desired future condition of rangeland ecosystems within the Forest. The EIS will describe resource management practices, levels of rangeland resource production and use, and the availability and suitability of National Forest System Lands for rangeland resource management.

A range of alternatives for improving unsatisfactory range conditions will be considered. One of these will be "no action." Other actions will consider various grazing controls, systems, seasons of use, and range improvements that will aid in achieving the desired future condition of the resource base outlined in the Forest Plan.

Federal, State, and local agencies, permit holders, livestock organizations, landowners, and individuals who may be interested in or affected by this proposal will be invited to participate in the scoping process. This process will include:

1. Identification of potential public issues, management concerns, and resource development opportunities.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by previous environmental analyses and reviews.
4. Exploration of additional alternatives.
5. Identification of potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determination of potential cooperating agencies, organizations, groups, and individuals, and the assignment of responsibilities.

The Fish and Wildlife Service and the Corps of Engineers will be invited to participate as cooperating agencies in evaluating potential impacts on threatened and endangered species habitat and wetlands and flood plains. The Division of Wildlife Resources will be invited to participate as a cooperating agency in evaluating potential impacts on wildlife and fish populations.

The public involvement process will begin with the publication of a Notice of Intent (NOI) to prepare an EIS in the **Federal Register.** Public contacts and open houses will be scheduled and conducted as requested and/or warranted.

The Draft Environmental Impact Statement (DEIS) should be available for public review by July 15, 1991, at which time the public will once again be encouraged to submit comments.

The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency's Notice of Availability appears in the **Federal Register.** It is very important that those interested in the management of range ecosystems participate at that time. To be most helpful, comments on the DEIS should be as specific as possible, and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal Court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' positions and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completing of the Final Environmental Impact Statement (FEIS). *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

The FEIS is scheduled for completion by November of 1991.

Dated: April 11, 1991.

Brent H. McBeth,

Acting Forest Supervisor.

[FR Doc. 91–9421 Filed 4–22–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–028]

Roller Chain, Other Than Bicycle, From Japan; Rovocation in Part of Antidumping Duty Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Revocation in part of antidumping duty finding.

SUMMARY: The Department of Commerce has determined to revoke in part the antidumping finding on roller chain, other than bicycle, from Japan with respect to Honda Motor Co., Ltd.

EFFECTIVE DATE: April 23, 1991.

FOR FURTHER INFORMATION CONTACT: Jackie Johnson or Linda Pasden, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; Telephone: (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 1973, the Department of Treasury ("Treasury") published an antidumping finding on roller chain, other than bicycle, from Japan (38 FR 9926). The administering authorities have twice published tentative revocations of the antidumping finding with respect to Honda Motor Co., Ltd. ("Honda"). The first tentative revocation was made by Treasury on August 17, 1977 (42 FR 41517). The Department of Commerce ("the Department") subsequently published a second tentative revocation of the finding with respect to Honda on October 8, 1982 (47 FR 44597).

On October 23, 1985, the petitioner, American Chain Association ("ACA"), submitted an administrative review request covering Honda during the period April 1, 1981 through March 31, 1985. This review request covered a portion of the "gap period" between the end of the base period of no dumping, which was the basis for the issuance of the tentative revocation, and the date on which the tentative revocation was published in the Federal Register, as well as several subsequent review periods. On July 9, 1986, the Department published a notice of initiation of administrative review covering Honda, and the period October 1, 1980 through October 8, 1982 (the "gap period") (51 FR 24883). On October 2, 1990, the ACA withdrew its request for the 1980 through 1983 review periods.

On February 13, 1991, the Department published a notice of intent to revoke in part (56 FR 5796) indicating that it had determined that it was reasonable to allow withdrawal in this case. The Department stated that it deemed the absence of a request for, or interest in pursuing, an administrative review as tantamount to having actually completed a review. As such, Honda's existing 0.00 percent *ad valorem* rate was applied to the periods in question. Since the Department had determined that Honda had no sales at less than fair value up to the date of publication of the notice of tentative determination to revoke, we concluded that a final determination on revocation was appropriate in accordance with § 353.54(f) (1988) of the Department's regulations.

Determination to Revoke

The Department received no objections to our intent to revoke the finding with respect to Honda Motor Co., Ltd. We have determined that a final determination on revocation is appropriate in accordance with § 353.54(f) (1988) of the Department's regulations.

This revocation applies to all unliquidated entries of this merchandise manufactured by Honda, entered or withdrawn from warehouse, for consumption on or after October 8, 1982. The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries if this merchandise entered, or withdrawn from warehouse, for consumption on or after October 8, 1982, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries.

This notice is in accordance with 19 CFR 353.54(f) (1988).

Dated: April 16, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-9497 Filed 4-22-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-007]

Final Determination of Sales at Less Than Fair Value: Sheet Piling From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that imports of sheet piling from Canada are being, or are likely to be, sold in the United States at less than fair value. We have notified the International Trade Commission (ITC) of our determination and have directed the Customs Service to continue to suspend liquidation of all entries of sheet piling from Canada, as described in the "Suspension of Liquidation" section of this notice. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry.

EFFECTIVE DATE: April 23, 1991.

FOR FURTHER INFORMATION CONTACT: Jim Terpstra or Mary Jenkins, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3965, or (202) 377-1756, respectively.

SUPPLEMENTAL INFORMATION:

Final Determination

We determine that imports of sheet piling from Canada are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673(d)(a)) (the Act). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

On June 28, 1982, the Department published its preliminary determination in this investigation (47 FR 27882). On September 15, 1982, the Department entered into a suspension agreement with Acier Casteel, Inc. (Casteel), the exporter accounting for substantially all of the U.S. imports of sheet piling from Canada. Under the terms of that agreement, Casteel agreed to revise its prices to eliminate completely sales at less than fair value (LTFV) (Sheet Piling from Canada: Notice of Suspension of Investigation 47 FR 40683, September 15, 1982). Pursuant to that agreement, and at the request of L.B. Foster, an interested party, the Department conducted an administrative review of the suspension agreement in accordance with section 751 of the Act. On August 8, 1990, the Department published the preliminary results of that review (55 FR 32280). On November 29, 1990, the Department published its Notice of Final Results of Antidumping Administrative Review and Cancellation of Suspension Agreement (55 FR 49551) in which it was determined that Casteel had sold sheet piling in the United States at LTFV. Pursuant to section 734(i)(1)(b) of the Act, we cancelled the suspension agreement and resumed the investigation as if our preliminary determination had been made on that date. We also instructed Customs to resume the suspension of liquidation on Canadian sheet piling.

We determined that it was appropriate to seek current data as the basis for our final determination for the reasons described in the DOC position to Comment 3 in the "Interested Party Comments" section of this notice. Accordingly, on December 20, 1990, we issued to Casteel an antidumping questionnaire requesting information for the period June 1 through November 30, 1990. We received a questionnaire response from Casteel on January 28, 1991. On February 6, 1991, we issued a deficiency questionnaire. The response to that questionnaire was received on February 13, 1991. On February 4, 1991, L.B. Foster alleged that Casteel was engaged in selling in its home market at prices below the cost of production (COP). L.B. Foster supplemented this allegation on February 13, 1991. Based on this allegation, we issued a COP questionnaire to Casteel on February 13,

1991. On March 7, 1991, we received a response to the COP questionnaire.

From March 11 through 15, 1991, verification of the questionnaire responses was conducted in Canada and in the United States. On March 29, 1991, a disclosure conference was held during which we provided interested parties with an outline of the methodology we planned to use for the final determination. Casteel and L.B. Foster filed case and rebuttal briefs on April 3 and 5, 1991, respectively. A public hearing was held on April 5, 1991.

Scope of Investigation

For purposes of this investigation, the term "sheet piling" covers sheet piling of iron and steel currently classifiable under Harmonized Tariff Schedule (HTS) subheading 7301.10.00. This merchandise was previously classifiable under item numbers 609.9600 and 609.9800 of the Tariff Schedules of the United States Annotated (TSUSA). Sheet pilings are shapes having interlocking joints on both sides to permit being driven, side-by-side, to form a continuous wall. The HTS and TSUSA subheadings are provided for convenience and customs purposes. The written description remains dispositive.

Period of Investigation

The period of investigation for purposes of this final determination is June 1, 1990, through November 30, 1990.

Such or Similar Merchandise

We have determined that all sheet piling constituted one such or similar category. When an identical comparison product could not be found, we selected the most similar comparison product by considering the following factors: (1) Whether or not the merchandise was cornered or rounded; (2) the alpha code (e.g., CZ) which reflects the shape of the sheet piling; and (3) the other physical characteristics of sheet piling identified in Casteel's product brochures (e.g., width, height, thickness and coating area). When comparing coated sheet piling in the United States with uncoated sheet piling in the home market (there were no sales of coated sheet piling in the home market), we made an adjustment for physical differences in merchandise for coating costs.

We did not include in our analysis fabricated sections, which were only sold in the home market, because we determined that they were less similar to the products sold in the United States than other products sold in Canada. Nor did we include home market sales of reinforced sections in our analysis because they were also determined to be less similar to the products sold in the United States than other products sold in Canada. Finally, we did not include used sheet piling in our analysis. (See Comment 2 in the "Interested Party Comments" section of this notice.)

Fair Value Comparisons

To determine whether sales of sheet piling from Canada to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on both purchase price (PP) and exporter's sales price (ESP), in accordance with section 772(b) and (c) of the Act. We calculated USP as ESP for transactions where the merchandise was sold to unrelated purchasers after importation into the United States. We calculated USP as PP where the merchandise was sold to unrelated purchasers prior to importation into the United States.

We calculated USP for both PP and ESP transactions based on unpacked, delivered prices to customers in the United States. We made deductions, where appropriate, for foreign inland freight, U.S. brokerage and handling, U.S. import duties, and U.S. taxes, in accordance with section 772(d)(2) of the Act. We added to the U.S. selling price the amount of the Canadian federal and provincial sales taxes that would have been collected if the merchandise had not been exported.

For ESP transactions, we made additional deductions for indirect selling expenses, which included inventory carrying costs, in accordance with section 772(e) of the Act. (See Comment 5 in the "Interested Party Comments" section of this notice.) We also included in indirect selling expenses a portion of the sales manager's salary incurred in Canada which Casteel claimed should be allocated entirely to home market sales.

Foreign Market Value

We determined that sales in the home market were the most appropriate basis for FMV because the home market was viable, pursuant to section 773(a)(1) of the Act.

Because L.B. Foster alleged that Casteel was selling to the home market at prices below the cost of production (COP), we gather and verified data on Casteel's production costs. In order to determine if Casteel's home market sales were above the COP, we calculated the COP on the basis of Casteel's reported materials, labor, other fabrication costs, and general expenses. We relied on the data reported by Casteel except as follows. We allocated general expenses over total tons of sheet piling sold. The financial statements for the second half of the period of investigation were not yet prepared and, as such, we were unable to allocate these expenses over cost of goods sold. In addition, we re-calculated interest expense to reflect the expenses of the Casteel Group. (See Comment 10 in the "Interested Party Comments" section of this notice.)

We found that less than 10 percent of Casteel's home market sales were at prices below the COP. Consequently, we did not disregard any below-cost sales because we determined that Casteel's below-cost sales were not made in substantial quantities over an extended period of time.

We calculated FMV based on unpacked, delivered or ex-works prices to unrelated customers in Canada. We made deductions, where appropriate, for inland freight.

When making comparisons with PP sales, we made adjustments where appropriate, for differences in circumstances of sale for credit costs, the bend test (quality control), and Canadian federal and provincial taxes, in accordance with 19 CFR 353.56. In addition, we allowed an adjustment for indirect selling expenses in Canada to offset commissions paid on U.S. sales, in accordance with 19 CFR 353.56(b), where appropriate. We re-calculated indirect selling expenses because Casteel was unable to substantiate at verification its basis for allocating certain expenses to the home market.

When making comparisons with ESP sales, we deducted home market credit expenses and Canadian federal and provincial taxes. We added the amount of Canadian federal and provincial taxes that we had calculated for the U.S. sale. We also deducted home market indirect selling expenses, which included inventory carrying costs, capped by the amount of the indirect selling expenses in the United States, in accordance with 19 CFR 353.56(b)(2). We re-calculated indirect selling expenses for the reason described above.

Verification

We verified the information used in making our final determination in accordance with section 776(b) of the Act. We used standard verification procedures, including examination of relevant accounting records and original source documents of the respondent.

Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (room B-099) of the Main Commerce Building.

Interested Party Comments

All comments raised by interested parties in this investigation are discussed below.

Comment 1

L.B. Foster contends that the Department should compare identical merchandise sold in the United States and home market. If this is not possible, the Department must make comparisons of the most similar, non-identical merchandise, with appropriate adjustments for cost differences. L.B. Foster maintains that in this investigation, the sheet piling types vary in coating area, mass, height, thickness, width, section modulus and weight. L.B. Foster further maintains that the Department should adjust for these different physical characteristics by factoring in the numerous manufacturing cost differences in producting the sheet piling models.

Casteel argues that the Department should ignore differences in shape or profile when comparing sheet piling. Casteel points out that comparisons of sheet piling in both the original investigation and the final results of the administrative review of the suspension agreement were made without regard to the type of piling involved, and that it would be illogical to compare the prices of piling sales on the basis of profile type. Casteel indicates that throughout this proceeding, sheet piling has been sold by weight, and not by profile or type. Casteel also asserts that there are no cost differences in producing sheet piling of different types.

DOC Position

We agree with L.B. Foster that comparisons of identical merchandise should be made where possible. In the calculation outline provided to interested parties prior to this determination, we indicated that we planned to compare sheet piling without regard to the type of sheet piling. However, after reviewing the information on the record in light of comments submitted by interested parties, we determined that identical matches should be made in this case.

Casteel's product brochure (attached to the questionnaire response) clearly indicates that there are physical differences in sheet piling with different alpha codes and series. Furthermore, although we have found no quantifiable cost differences associated with these product differences, Casteel has provided no evidence that it prices sheet piling without regard to alpha code or series. Casteel may, in fact, sell sheet piling on a per ton basis, but this does not mean, and Casteel has not demonstrated, that the price per ton is the same for all alpha codes and series.

We disagree with L.B. Foster that we should make an adjustment for costs associated with the physical differences between sheet piling of different alpha codes and series. At verification, we found that Casteel incurs the same per ton COP regardless of the alpha code or series of the sheet piling.

Comment 2

L.B. Foster contends that the Department should include Casteel's sales of used sheet piling in the United States in its fair value comparisons; specifically, L.B. Foster contends that the Department should compare used sheet piling sold in the United States to new sheet piling sold in Canada. L.B. Foster further contends that if the Department ignores sales of used merchandise, it would be discarding some of the lowest-priced sales which compete directly with L.B. Foster's sales in the United States. L.B. Foster further argues that Casteel's ability to manipulate what it categorizes as used versus new sheet piling (marketed in the exact same manner) is a strong incentive not to discard these sales.

Casteel asserts that the Department should omit these sales from the margin calculations since they represent a relatively small portion of total U.S. sales during the period of investigation (POI). Additionally, Casteel argues that if the Department were to include these U.S. sales of used sheet piling in its margin calculations, these sales should be compared with home market sales of used piling. Otherwise, a difference of merchandise adjustment should be made.

DOC Position

We disregarded used sales because we had sufficient sales of new sheet piling to form the basis of our fair value comparisons. Although Casteel stated that some of the differences between new and used sheet piling include differences in straightness, length, and fit of the interlocks, no company records were maintained to account for these differences. In reporting sales of used sheet piling, Casteel only reported the alpha code and series of the used sale and gave no indication of the types of physical differences described above.

Comment 3

Casteel asserts that the Department has improperly handled this invesigation in three ways: (1) The Department should not have resumed the investigation because a Binational Panel may overturn the cancellation of the suspension agreement and render this proceeding a nullity; (2) the Department, in deciding to collect data for a current period, rushed the investigatory process and ignored the Act by disregarding the information used in the preliminary determination in 1982; and (3) the Department improperly conducted a COP investigation because no interested party made a timely COP allegation and because Casteel was not given an opportunity to comment on the allegation.

L.B. Foster contends that the Department should have resumed this investigation using information developed in the review which resulted in the cancellation of the suspension agreement (September 1, 1985, through August 31, 1986). L.B. Foster further maintains the Department is required to consider merchandise which is the subject of the investigation without regard to the affect of the suspension agreement on those imports and that the Department, by looking at current information, is not ignoring the effect of the suspension agreement on Casteel's pricing practices. L.B. Foster asserts that Casteel knew it was under scrutiny by the Department as a result of the ongoing administrative review of the suspension agreement and, consequently, moderated its pricing practices.

DOC Position

With respect to Casteel's first argument, in similar circumstances the U.S. Court of International Trade has ruled that the Department need not defer its conduct of one stage of an antidumping proceeding merely because litigation is pending with respect to an earlier stage of the same proceeding. *Tai Yang Metal Industrial Co., Ltd.* v. *United States*, 712 F. Supp. 973 (CIT 1989). There is nothing in section 516A(g) of the Act which warrants a different outcome here.

Section 734(i)(1)(B) of the Act provides that if the Department determines that an agreement has been violated, it shall resume the investigation as if its affirmative preliminary determination were made on the date notice of cancellation of the suspension agreement is published. Accordingly, we resumed the investigation on November 29, 1990, the date notice of the

cancellation of the suspension agreement was published. Because of the highly unusual nature of this proceeding, we were faced with the issue of determining which time period to examine for purposes of determining the existence of sales at less than fair value. We considered three alternatives: (1) The data on the record from the original 1982 proceeding; (2) the data on the record from the 1985–86 review; and (3) data from June through November 1990 (i.e., the month the investigation was resumed plus the preceding five months.) We determined that the information from the original investigation would not be reflective of Casteel's current pricing practices. Moreover, the dearth of discussion concerning this subject in the legislative history of the Act indicates that Congress, in designing a mechanism requiring the resumption of the investigation, apparently did not contemplate a situation where the Department would have to reach a final determination using eight-year old information. Similarly, we determined that the data from the 1985–86 administrative review would not be any more reflective of Casteel's current pricing than the 1982 data. Consequently, we determined that current information would be the most appropriate.

The ITC also decided to collect data from a current period since it is required to make a determination of present injury or threat thereof. According to the Act, a casual link between dumped imports and injury to a domestic injury must exist before antidumping duties may be assessed. Therefore, there must be contemporaneity between our LTFV determination and the ITC's injury determination.

Regarding the effect of the suspension agreement on the sales in question, L.B. Foster has provided no evidence that Casteel's pricing practices were less affected by the suspension agreement during the 1985—1986 review period than during the current period. Casteel had been providing price information to, and was subject to the scrutiny of, the Department during the entire period the suspension agreement was in effect.

Regarding the COP allegation, under normal circumstances the Department will not consider a COP allegation submitted more than 45 days prior to the preliminary determination, in accordance with 19 CFR 353.31(c). However, due to the highly unusual nature of this proceeding, this regulation can not apply. Therefore, the Department was required to construct a reasonable time limit to allow interested parties to make COP allegations. Given our decision to use current information, we decided that one week from the filing of Casteel's questionnaire response was reasonable time limit. Casteel was free to submit comments on the COP allegation; it chose not to do so.

Regarding Casteel's contention that the COP allegation was not made by an interested party, the term interested party is defined in section 771(9)(C) of the Act to include "a manufacturer, producer, or wholesaler in the United States of a like product." L.B. Foster has submitted a certified statement that it is a wholesale distributor of the subject merchandise in the United States. Accordingly, L.B. Foster qualifies as an interested party.

Comment 4

L.B. Foster contends that the Department should make a difference in merchandise adjustment for those sales made by Casteel which incurred additional pairing costs.

Casteel contends that there is no evidence on the record indicating that pairing costs are substantial and further maintains that an adjustment is unnecessary. In the alternative, the Department should exclude these sales with pairing costs from the margin calculations.

DOC Position

We agree with Casteel. At verification we found no indication of any costs associated with pairing other than an insignificant number of labor minutes. Therefore, there is no basis for making a difference in merchandise adjustment.

Comment 5

L.B. Foster contends that the Department should include inventory carrying costs in its calculation of indirect selling expenses for ESP transactions. Casteel maintains that the Department should not deduct inventory carrying charges for ESP transactions. Casteel further argues that there is nothing on the record to indicate that inventory carrying costs are substantial or are different for the home market when compared with U.S. sales. Otherwise, Casteel points out that the Department should make the same cost adjustment to FMV.

DOC Position

At verification, we gathered inventory records for both home market and U.S. sales (see, cost verification report at exhibit COP–16 and exporter's sales price verification report at exhibit I–1). These records indicate that Casteel did hold sheet piling in inventory in both markets during the POI. Although Casteel reported no such expenses, verification confirmed that such expenses were incurred. Consequently, we calculated inventory caryring costs for sales in both markets based on the data obtained at verification.

Comment 6

L.B. Foster argues that the record in this proceeding does not support an adjustment for a bend test. L.B. Foster further argues that if the Department does make an adjustment for the bend test, it should be treated as an indirect selling expense.

DOC Position

We disagree. At verification we determined that the bend test was a requirement specified by the customer for certain sales and that Casteel reported these expenses only on the sales on which they were incurred. Consequently, we are allowing Casteel's claim for a circumstance of sale adjustment for the bend test as a direct selling expense.

Comment 7

L.B. Foster alleges that the leasing of sheet piling by Casteel U.S.A. is equivalent to sales and should, therefore, be included in the Department's fair value comparisons.

DOC Position

We examined Casteel's leases at verification and determined that these transactions are not equivalent to sales within the meaning of section 1327 the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act). Section 1327 of the 1988 Act provides six factors which the Department should consider when determining whether a lease is "equivalent to a sale": (1) The terms of the lease; (2) normal commercial practice within the industry; (3) the circumstances of the specific transaction; (4) the integration of the product into the operations of the lessee or importer; (5) the likelihood of continuation or renewal of the lease over a significant period of time; and (6) other relevant factors, including the possibility of avoidance of dumping duties.

Our review of the terms of the lease revealed that: Casteel used a standard contract for all these transactions; all contracts ranged from one to three years; none of the contracts provided for successive lease extensions with the same lessee; none of the contracts contained an option-to-buy provision; and the only obligation borne by the lessee was an adjustment charge for any portion of sheet piling returned that was

unusable. Thus, when viewed together, these contract terms suggest transactions more analogous to short-term operating leases than sales.

In addition, our examination of Casteel's records demonstrates that leasing sheet piling does not, in effect, amount to a transfer of ownership. The language of the lease agreement clearly contemplates the return of the sheet piling to Casteel at the expiration of the rental term. Finally, there is no evidence that Casteel's leases are being used as a guise to avoid dumping duties. A review of Casteel's lease contracts demonstrates that Casteel's leases are an on-going line of business, not a technique developed to circumvent the antidumping law. Therefore, we determine that Casteel's leases should not be included in our fair value comparisons.

Comment 8

L.B. Foster argues that, since Casteel has not supported the U.S. freight charges it reported, the Department should use the highest freight charge reported as best information available on all ESP sales.

DOC Position

We agree. At verification, Casteel was unable to substantiate its reported freight cost. We have applied the highest inland freight charge incurred on any ESP sale to all ESP sales as best information available.

Comment 9

L.B. Foster urges the Department to reject Casteel's allocation of indirect selling expenses based on profit. This method, it argues, distorts the amount of indirect selling expenses attributable to U.S. sales. This is especially true if Casteel is dumping, since its U.S. sales of sheet piling will have less profit than other product lines.

DOC Position

We agree. Casteel has provided no justification for its profit-based allocation of indirect selling expenses. We have reallocated indirect selling expenses over total sales in accordance with our normal practice.

Comment 10

L.B. Foster argues that the Department should impute an interest expense for a related party loan and apply this expense to the COP. L.B. Foster further argues that the Department should disregard Casteel's claimed offset for interest income because it includes related party payments for investments not related to the production or sale of sheet piling.

DOC Position

We have rejected Casteel's reported interest expense for the COP including its offset for interest income. Instead, we included in COP an allocated portion of the finance expense reported in the Casteel Group's financial statements. The Department considers financing expenses to be those costs incurred for the general operations of the corporation. Given the fungible nature of a corporation's invested capital resources, including debt, we allocated the Casteel Group's interest expense over the total operation of the consolidated corporation.

Comment 11

L.B. Foster argues that the Department should reject the fabrication cost reported by Casteel in favor of the amount Casteel charges unrelated parties for purposes of making adjustments for differences in merchandise. L.B. Foster asserts that Casteel has not demonstrated that these are arm's-length transactions.

DOC Position

Given that we are comparing sales of cornered sheet piling in each market, no adjustments for physical differences associated with cornering are necessary. Consequently, this issue is irrelevant to this final determination.

Comment 12

L.B. Foster argues that the Department should reject the overhead and general and administrative expenses for June and July because expenses incurred during these months were abnormally low.

Casteel argues that the two-week plant shutdown in June and the auditor's year-end adjustments in July are annual occurrences. Consequently, the annual average is an accurate reflection of Casteel's actual cost expense.

DOC Position

We agree with Casteel. At verification we determined that the adjustments to June and July expenses were normal, recurring events. Accordingly, we determined that annual averages would be reflective of Casteel's actual cost experience.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of sheet piling from Canada, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service will require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of sheet piling in Canada exceeds the United States price as shown below.

The weighted average margins are as follows:

Manufacturer/Producer/Exporter	Margin percentage
Casteel, Inc	2.91
All others	2.91

ITC Notification

In accordance with section 735(c) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry. If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a reuslt of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on sheet piling from Canada entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, equal to the margin shown above.

This determination is published pursuant to 19 CFR 353.20(a)(4) and section 735(d) of the Act.

Dated: April 15, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-9498 Filed 4-22-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-806]

Final Determination of Sales at Less Than Fair Value: Silicon Metal From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (the Department) has determined that imports of silicon metal from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value. Furthermore, the Department has determined that critical circumstances exist for imports of silicon metal from the PRC. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of silicon metal from the PRC, as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: April 23, 1991.

FOR FURTHER INFORMATION CONTACT: James Terpstra or James Maeder, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3965 or 377-4929, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that imports of silicon metal from the PRC are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average margin is shown in the "Suspension of Liquidation" section of this notice. We also determine that critical circumstances exist with respect to imports of silicon metal from the PRC.

Case History

Since the publication of the notice of preliminary determination (56 FR 4596, February 5, 1991), the following events have occurred.

On February 11, 1991, Xiamen Xing Xia Company Ltd., a producer of silicon metal in the PRC, submitted a response to the Department's questionnaire, and requested a postponement of the final determination. On February 28, 1991, we returned this submission because it was submitted in an untimely manner. On the same day, the Embassy resubmitted Xiamen Xing Xia Company Ltd.'s request for a postponement of the final determination. On March 1, 1991, American Carbon & Metals Corporation (ACMC), an interested party in this investigation, submitted letters from Guangzhou Foreign Economic Development Corp., Kachant Development Ltd., Lianyungang Metal Mineral & Machinery Import & Export Corp., and China National Nonferrous Metal Import & Export Corp., Jiangsu Branch, requesting that the Department postpone its final determination. On March 4, 1991, petitioners submitted a letter opposing the above-referenced postponement requests. On March 7, 1991, we informed the Embassy that the Department had no basis on which to postpone the final determination. On March 11, 1991, the Department denied the postponement requests because we had no information on the record that would indicate that the exporters requesting the postponement constituted a significant proportion of PRC exports of silicon metal to the United States. (See, DOC Position to Comment 2 in the "Interested Party Comments" section of this notice.)

On March 4, 1991, the Department extended the March 4, 1991, deadline for filing of case briefs until March 5, 1991. On March 5, 1991, case briefs were filed by petitioners, ACMC and Midland Export Limited (Midland). On March 11, 1991, rebuttal briefs were filed by petitioners, Timco, the Aluminum Recycling Association (ARA), and the Aluminum Smelting and Refining Company, Inc. (ASRC). On March 12, 1991, ACMC filed its rebuttal brief. A public hearing was held on March 13, 1991.

Scope of Investigation

The merchandise covered by this investigation is silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this investigation. Given that this investigation is not limited to silicon metal used only as an alloying agent or in the chemical industry, we have deleted the sentence regarding the uses for silicon metal from the scope of this investigation. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

Period of Investigation

The period of investigation (POI) is March 1, 1990, through August 31, 1990.

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of best information available is appropriate in this investigation. In deciding whether to use best information available, section 776(c) provides that the Department may take into account whether the respondent was able to produce information requested in a timely manner and in the form required. In this case, exporters of silicon metal from the PRC were not able to do so.

During the course of this investigation, serious problems were encountered in obtaining the price and production data needed for the Department's analysis. In spite of repeated requests since the initiation of this investigation, the Embassy was never able to identify the universe of potential respondents in the PRC or provide adequate price and production data. This information was necessary in order for the Department to base its analysis on sales data that is reflective of the exporting industry. Consequently, we have based our final determination in this investigation on best information available. As best information available, we used the highest margin listed in the notice of initiation for this investigation, which was based on the petition.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of the subject merchandise from the PRC. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to 19 CFR 353.16(f), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if

applicable); and (3) the share of domestic consumption accounted for by imports.

In determining knowledge of dumping, we normally consider margins of 25 percent or more sufficient to impute knowledge of dumping under section 735(a)(3)(A)(ii). (See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy, 52 FR 24198, June 29, 1987). Because we are relying on the petition for purposes of our final determination regarding sales at less than fair value (see, the "Best Information Available" section of this notice), we have also relied on the petition as best information available in determining knowledge of dumping.

Average margins contained in the petition for silicon metal exceed 25 percent. In addition, there is an outstanding antidumping duty order in the European Economic Community (EEC) on silicon metal from the PRC (Council Regulation (EEC) No. 2200/90, July 27, 1990). The EEC found a dumping margin of 38.73 percent. Therefore, in accordance with sections 735(a)(3)(A)(i) and (ii) of the Act, we determine that there is both a history of dumping outside the United States and that importers knew or should have known that the producers or resellers of silicon metal from the PRC were selling it at less than its fair value.

Because the Department did not receive a timely response in the form required, we have relied upon best information available for determining whether there have been massive imports of silicon metal. As best information available, we used the Commerce Department's import statistics to measure import levels of silicon metal from the PRC.

Pursuant to § 353.16(g) of the Department's regulations, in making critical circumstances determinations, the Department normally compares the period beginning on the date the proceeding begins and ending at least three months later (the comparison period) with the three-month period prior to the filing of the petition (the base period). The Department considers the comparison period because it is the period immediately prior to a preliminary determination in which exporters of the subject merchandise could take advantage of their knowledge of the antidumping investigation to increase exports to the United States without being subject to antidumping duties. (See, e.g., Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan, 53 FR 12552, April 15, 1988.)

Based on our analysis of the monthly Commerce Department import statistics, we have found that imports of silicon metal have been massive over a relatively short period of time. We also examined Commerce Department import statistics to ensure that the increase in imports did not simply reflect seasonal trends. The data did not indicate any seasonal increases in shipments. Therefore, we find that the requirements of section 735(a)(3) have been met with respect to silicon metal from the PRC.

Standing

ASRC, Timco, and ARA argue that petitioners lacked standing to file a petition on behalf of the domestic industry. Respondents assert that (1) silicon metal with a silicon content of between 96 and 97.49 percent, and silicon metal having a silicon content of between 97.5 but less than 99.99 percent are different like products and (2) petitioners do not produce silicon metal in the 96 to 97.49 percent range. However, the ITC has preliminarily determined that there is one like product, which includes all of the merchandise defined by the scope of this investigation. Moreover, ASRC, Timco, and ARA do not challenge the fact that petitioners do produce silicon metal in the higher range. Accordingly, we determine that petitioners have standing to file and maintain a case on behalf of the domestic industry producing silicon metal covered by the scope of this investigation.

Verification

Because we never received a timely response to our questionnaire and are using best information available for our determination, we did not conduct verification.

Interested Party Comments

All comments raised by parties to the proceeding in this antidumping duty investigation of silicon metal from the PRC are discussed below.

Comment 1

ACMC argues that the Department should not accept petitioners' surrogate country analysis contained in the petition as the best information available. ACMC asserts that the use of India as a surrogate country is ill-suited for this investigation because of the disparity in the amount of exports of silicon metal from India and the PRC. Midland contends that India is not an appropriate surrogate country because India is not a significant producer of the subject merchandise. Timco, ARA, and ASRC contend that the Department should value the factors of production in a market economy which is a net exporter of the subject merchandise. They maintain that India is a net importer of silicon metal. (See, e.g., Shop Towels of Cotton from the People's Republic of China, Notice of Final Results of Antidumping Duty Administrative Review, 56 FR 4040, 1991.) In addition, Timco, ARA, and ASRC argue that electricity costs, which constitute a large portion of the cost of production of silicon metal, should not be valued in India. They maintain that because of power shortages (see, Metal Bulletin Fast Track, March 5, 1991), Indian electricity costs are three to four times greater than in South Africa and Norway, other significant producers of silicon metal (see, Metal Bulletin, March 7, 1991). Instead, they argue that Yugoslavia is a more appropriate surrogate for electricity costs in the factors of production analysis. They argue that Yugoslavia is a net exporter of silicon metal and is only moderately more developed than the PRC.

Petitioners argue that the use of India as a surrogate country for the PRC is appropriate because India is a market economy country that is at a level of economic development comparable to the PRC, and is a significant producer of silicon metal. To support its argument, petitioners point out that India has been used as a surrogate for the PRC in previous determinations by the Department. (See, e.g., Tapered Roller Bearings from the People's Republic of China, 52 FR 19748, 1987.) Finally, petitioners argue that the use of India is appropriate because the Department should use, as best information available, the highest margin listed in the notice of initiation, and not cost information from other sources.

DOC Position

In the preliminary determination, we relied exclusively upon best information available (i.e., the adjusted petition rate of 139.49 percent based, in part, upon surrogate information from India), because the respondent failed to submit a timely questionnaire response. (See, 19 U.S.C. 1677e(c) (1991)). The interested party importers have challenged the Department's selection of best information available in this case and have submitted additional information for the Department to consider.

Best information available is usually information that is prejudicial to a respondent. This well-established proposition follows from the long-standing tenet that the best information rule is a rule of reasonable adverse

inference designed to induce respondents, in the absence of any subpoena power vested in the Department, to submit timely, complete, and accurate questionnaire responses. This is imperative to permit the completion of investigations in accordance with the Act's strict statutory time limits.

When the respondent failed to submit any information in a timely manner for use in this case, the Department could only presume that the withheld information would establish margins in excess of 139.49 percent. Otherwise, in the words of the Federal Circuit, the respondent "knowing of the rule, would have produced current information showing the margin to be less." (*Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990).) Therefore, the department would not accept factual information challenging the Department's calculation of BIA from respondents who failed to submit timely answers to our questionnaires.

However, in this case unrelated importers have alleged that the BIA information used by the Department reflects extraordinary or aberrant conditions or circumstances regarding electricity rates in India. These importers supported their allegation with information available in the public domain. Under these circumstances, the Department deemed it appropriate to accept their information and consider their arguments. After reviewing the information submitted, the Department found that the Indian electricity rates relied on by the petitioner and used by the Department as BIA do not reflect extraordinary or aberrant conditions or circumstances in India. While there may very well be electricity shortages in India, the importers have presented no evidence that the shortages are in any way aberrant or extraordinary. In fact, it appears from the importer's rebuttal brief that India suffers from chronic electricity shortages. Therefore, the Department's use of Indian electricity rates as BIA is appropriate.

Comment 2

ACMC contends that the Department's rejection of the requests for postponement of the final determination is not based on compelling reasons. ACMC asserts that a significant proportion of producers of silicon metal from the PRC requested the postponement and that such a postponement would provide an opportunity to develop data relevant to the Department's calculation of foreign market value (FMV).

Petitioners maintain that none of the parties requesting the postponement of the final determination satisfy the requirement that they account for a significant proportion of exports of the merchandise, in accordance with 19 U.S.C. 1673d(a)(2)(A). Petitioners further contend that any data submitted after the preliminary determination could not provide the basis for the Department's calculation of FMV.

DOC Position

We agree with petitioncrs. While information on the record indicates that there are at least 17 producers of silicon metal in the PRC, we never received a timely response to our questionnaire from any of these producers. Moreover, we have no way of determining how many other producers there may be. Therefore, we had no way of determining if the five PRC exporters of silicon metal requesting the postponement of the final determination accounted for a significant proportion of exports of the subject merchandise, in accordance with 19 CFR 353.20(b). In addition, because we received no timely response and we relied on best information available for purposes of the preliminary determination, we cannot accept or consider additional factual information for FMV calculations not provided in response to our questionnaire for purposes of our final determination, pursuant to 19 CFR 353.31(b). Thus, even if a request had been made by exporters who accounted for a significant proportion of exports, compelling reasons existed for not posponing the final determination.

Comment 3

Midland contends that critical circumstances do not exist with respect to imports of silicon metal from the PRC. Midland maintains that there is no history of dumping in the United States of silicon metal from the PRC, and that in the EEC, only an 18.9 percent antidumping duty was imposed. Midland also contends that import levels of Chinese silicon metal have not been massive since the filing of the petition in this investigation. ACMC, Timco, ARA, and ASRC assert that the Department should rescind its critical circumstances determination based on the substantial imports of silicon metal by petitioners. Timco, ARA, and ASCR contend that the Department should not permit petitioners to obtain a critical circumstances determination unless they will assert that they are not responsible for imports during the period when they allege critical circumstances existed.

Petitioners maintain that critical circumstances exist with respect to imports of silicon metal from the PRC because of the high margins preliminarily found to exist in this investigation, and because imports from the PRC have been massive over a relatively short period of time.

DOC Position

We agree with petititioners. (See, the "Critical Circumstances" section of this notice.)

Comment 4

Petitioners argue that the Department should redefine the scope of this investigation to encompass all imports of silicon metal, other than semiconductor grade silicon metal, including "silicon metal" containing less than 96 percent silicon. Petitioners assert that Census Bureau imports statistics indicate that silicon metal containing less than 96 percent silicon has entered the United States since the filing of the petition. In addition, petitioners submitted a telefax from an importer indicating that it could offer silicon metal containing less than 96 percent silicon. Petitioners assert that this indicates that importers may attempt to circumvent an antidumping duty order by importation of "silicon metal" containing less than 96 percent silicon.

Timco, ARA, and ASRC contend that scope should not include silicon metal with a silicon content less than 97.50 percent. ACMC maintains that the scope should remain as it has been defined in the initiation and the preliminary determination of the investigation. ACMC, Timco, ARA, and ASRC assert that the secondary aluminum industry, a significant purchaser of silicon metal, cannot and does not utilize silicon metal containing less than 96.00 percent silicon. ACMC contends that the physical characteristics and chemical composition of silicon metal containing less than 96.00 percent silicon are different than those of silicon metal as defined by the scope of this investigation. ACMC further contends that petitioners' assertion that the aluminum industry may be interested in purchasing silicon metal with a silicon content lower than 96.00 percent is speculative; petitioners' proof of one instance of such as a sale does not indicate any pattern of such production or sales.

DOC Position

We agree with ACMC. No party has submitted evidence on the record that a substance containing less than 96 percent silicon is silicon metal. Petitioners have simply alleged that (1) an importer has attempted to ofer a substance containing less than 96

percent silicon that could be be used for the same applications as silicon metal; and, (2) import statistics indicate that a substance containing less than 96 percent silicon may have been classified as silicon metal containing greater than 96 percent silicon. While this suggests that an importer may be attempting to sell a product that is to be used as silicon metal, this is not evidence that this substance is silicon metal. Also, the posibility that an imported good may have been misclassified as silicon metal does not establish the product actually is silicon metal.

In addition, at the time of initiation, the Department researched the definition of silicon metal in establishing the scope of this investigation. All of the parties we contacted and sources we consulted, including the petitioners, indicated that the industry standard for silicon metal is a silicon content of between 96 and 99.99 percent.

For these reasons, we are not redefining the scope of this investigation. (See, also, the "Scope of Investigation" section of this notice.)

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of silicon metal from the PRC, as defined in the "Scope of Investigation" section of this notice, that are entered or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of our preliminary determination (56 FR 4596, February 5, 1991). The Customs Service shall require a cash deposit or posting of a bond equal to 139.49 percent on all entries of silicon metal from the PRC. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(c) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist with respect to the product under investigation, the applicable proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exit, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on silicon metal from the PRC entered or withdrawn from warehouses, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the FMV exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. section 1673d(d) and 19 CFR 353.20(a)(4)).

Dated: April 16, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-9499 Filed 4-22-91; 8:45 am]

BILLING CODE 3510-DS-M

President's Export Council; Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The Export Promotion Resources, Communications and Marketing Subcommittee of the President's Export Council is holding its first meeting to discuss organizational issues and ways the Council could aid in promoting exports. Briefings and discussions will cover export financing issues; ways to upgrade and package U.S. Government export promotion programs, coordination with the Trade Promotion Coordinating Committee and other activities to promote U.S. exports. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979, to adivse the President on matters relating to U.S. export trade.

DATES: May 7, 1991, from 9:30 a.m.–1:30 p.m.

ADDRESSES: Main Commerce Building, room 6029, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Seating is limited and will be on a first come, first serve basis.

FOR FURTHER INFORMATION CONTACT: Ms. Annette Richard, President's Export Council, room 3215, Washington, DC 20230.

Dated: April 18, 1991.

Wendy H. Smith,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 91-9503 Filed 4-22-91; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Seafood Safety; Symposium

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public symposium.

SUMMARY: A symposium on seafoood safety issues will be held on May 14, 1991, to discuss (1) an overview of seafood safety concerns; (2) the role of industry and consumer education in protecting public health; (3) chemical contaminants and toxicity models in assessing risk to humans consuming seafood and ways to manage that risk; and (4) the role of state and Federal regulations in protecting public health. Individuals interested in seafood safety are invited to attend and to participate in discussions.

DATES: The symposium will be held on Tuesday, May 14, 1991, from 7:45 a.m. until 5:30 p.m.; registration will be from 7:45 a.m. until 8:15 a.m.

ADDRESSES: The symposium will be held at the National Academy of Sciences Auditorium, 2101 Constitution Avenue, NW, Washington, DC 20418. Registration will be at the C Street entrance Registration Desk.

FOR FURTHER INFORMATION CONTACT: Farid E. Ahmed, Institute of Medicine, NAS, 2101 Constitution Avenue, Washington, DC 20418, (202) 334-2673 or G. Malcolm Meaburn, NMFS, Charleston Laboratory, P.O. Box 12607, Charleston, SC 29412, (803) 762-1200.

SUPPLEMENTARY INFORMATION: At the request of NMFS, the Insititute of Medicine (IOM) of the National Academy of Sciences started a 2-year congressionally mandated study in November 1988 to design a program of certification and seafood surveillance. The final report of the Food and Nutrition Board (FNB) appointed Committee on Evaluation of the Safety of Fishery Products will be published in April 1991. The agency and the FNB/IOM agreed that there should be a symposium, shortly following the release of the report, to highlight the report's conclusions and recommendations and to give the public, seafood industry, academicians, legislators, and various state and Federal agency regulators an opportunity to deliberate important and contentious issues in the area of seafood safety in an open forum and to further highlight areas for future pursuance. The symposium's four sessions will encompass the areas listed in the summary.

Dated: April 16, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91-9412 Filed 4-22-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Consolidation of Export Visa and Exempt Certification Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

April 17, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs consolidating existing export visa and exempt certification requirements.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In exchange of letters dated April 8 and 10, 1991, the Governments of the United States and the Republic of Korea agreed to consolidate the existing provisions of the export visa and certification system into a single document in an effort to clarify and facilitate implementation of the current requirements.

A description of the textile and apparel categories in terms of HTS numbers is availabe in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 37 FR 10605, published on May 25, 1972.

Interested persons are advised to take all necessary steps to ensure that textile products, produced or manufactured in Korea, which are to be entered into the United States for consumption, or withdrawn from warehouse for consumption, that are exported from Korea will meet the restated visa and exempt certification requirements.

Dated: April 18, 1991.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 17, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: A directive dated May 19, 1972, as amended, established export visa and exempt certification requirements for certain textiles and textile products, produced or manufactured in Korea. The purpose of this directive is to consolidate the existing provisions into a single document to clarify and facilitate implementation of the current requirements. Merchandise exported from Korea shall continue to be subject to the May 19, 1972 directive, as amended.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Textile Agreement of November 21 and December 4, 1986, as amended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber texiles and textile products in Categories 200-239, 300-369, 400-469, 600-670 and 800-899, incuding merged and part categories (see Annex A), produced or manufactured in Korea and exported from Korea for which the Government of the Republic of Korea has not issued an appropriate visa fully described below. Should additional categories, merged categories of part-categories be added to the bilateral agreement, or become subject to import quotas, the entire category(s) or part-category(s) shall be included in the coverage of this visa arrangement on an agreed effective date.

A visa must accompany each commercial shipment of the aforementioned textile products. A circular stamped marking in blue ink will appear on the front of the original commercial invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine degit letter format, beginning with one numerical digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO) (the code for the Republic of Korea is "KR"), and a six digit numerical serial number identifying the shipment; e.g., 1KR123456.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The signature of the issuing official.

4. The correct category(s), merged category(s), part category(s), quantity(s), and unit(s) of quantity in the shipment as set forth in the U.S. Department of Commerce Correlation (e.g., "Cat. 340-510 DZ").

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., Categories 347/348 may be visaed as 347/348 or if the shipment consists solely of Category 347 merchandise, the shipment may be visaed as "Cat. 347," but not as "Cat. 348").

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

If the visa is not acceptable then a new visa must be obtained from the appropriate export association through their Korean suppliers, or a visa waiver may be issued by the U.S. Department of Commerce at the request of the Government of the Republic of Korea in Washington, D.C., and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or a visa waiver.

If import quotas are in force, U.S. Customs Service shall charge only the actual quantity in the shipment to the correct category limit. If a shipment from Korea has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, U.S. Customs shall charge the shipment to the correct category limit whether or not a replacement visa or visa waiver is provided.

Certain merchandise which is exempt from quantitative levels of the bilateral agreement with the Government of the Republic of Korea shall require a "Non-quota Exempt Certification" prior to exportation (see Annex B).

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. $250 or less, do not require a visa or exempt certification for entry and shall not be charged to the agreement levels.

The actions taken with respect to the Government of the Republic of Korea with respect to imports of textiles and textile products in the foregoing categories have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commission of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register.**

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Annex A; Part-Categories

340—Other than Dress Shirts—all HTS numbers except those in Category 340–D
340–D—Dress Shirts—only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030
359–H—Headwear—only HTS numbers 6505.90.1540 and 6505.90.2060
359–O—Other—all HTS numbers except those in Category 359–H
369–L—Luggage—only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000.
369–O—Other—all HTS numbers except those in Category 369–L
459–W—Woven Headwear—only HTS number 6505.90.4090
459–O—Other—all HTS numbers except 6505.90.4090 in Category 459–W
640–D—Dress shirts—only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.2030 and 6205.90.4030
640–O—Other than Dress Shirts—all HTS numbers except those in 640–D
641—Other Blouses—all HTS numbers except those in Category 641–Y
641–Y—Blouses with two or more colors in the warp and/or filling—only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025
659–H—Headwear—only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090
659–S—Swimwear—only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020
659–O—Other—all HTS numbers except those in Categories 659–H and 659–S
669–P—Polypropylene Bags—only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000
669–O—Other—all HTS numbers except those in Category 669–P
670–L—Luggage—only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020
670–O—Other—all HTS numbers except those in Category 670–L

Merged Categories

300/301
317/326
613/614
619/620
625/626/627/628/629
333/334/335
338/339
342/642
347/348
351/651
353/354/653/654
445/446
633/634/635
638/639
645/646
647/648
369–L/670–L/870

Annex B; Exempt Products Requiring Exempt Certification

1. Chima—The long, formless and ample skirt portion of the traditional Korean chima-chogori dress set.
2. Chogori—The short halter-type blouse or top portion of the traditional Korean chima-chogori dress set.
3. Bosun—An ankle boot-type article, wholly of cloth, worn by Korean women indoors.
4. Fabrics—not to exceed 24×48 inches in size, containing hand embroidered or handpainted Korean scenes, and used primarily as decorations or art objects.
5. Handmade carpets—i.e., in which the pile was inserted knotted by hand and classified by the U.S. Customs Service under HTS 5701.10.1600, 5701.10.2010 or 5703.20.1000.
6. Korean—style handbags—and other flatgoods of the type considered by the U.S. Customs Service to be classified as luggage: women's and children's handbags, and billfolds, card cases, coin purses, eyeglass cases and similar flatgoods.
7. Martial Arts Uniforms.
8. Toys for animals.

[FR Doc. 91–9500 Filed 4–22–91; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Base Closure and Realignment Commission; Meeting

ACTION: Amendment to announcement of public hearing of the Defense Base Closure and Realignment Commission.

SUMMARY: The meeting of the Defense Base Closure and Realignment Commission scheduled for April 26, 1991 (56 FR 15864, April 18, 1991) has an agenda change. The meeting will begin at 10 a.m. in the Longworth House Office Building, room 1100, as was previously published in the Federal Register. However, the morning session (10 a.m. until Noon) will be a working session for the Commission staff to brief the Commission on activity to date in the areas of review and analysis planning, communication and public affairs strategy, and legal issues.

The afternoon session (1 p.m. until 4 p.m.) will be concerned primarily with taking testimony from the Chairman of the Joint Chiefs of Staff on force structure, and a panel of the Defense and Service Assistant Secretaries (Installations) on the detailed process and methodology on how the candidate installations were determined.

These changes were requested by the Commission during the business portion of the meeting held on April 15, 1991.

For further information, please contact the Defense Base Closure and Realignment Commission, Mr. Cary Walker, Director of Communications and Public Affairs, 202–653–0823.

Dated: April 18, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–9484 Filed 4–22–91; 8:45 am]

BILLING CODE 3810–01–M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, 27 June 1991.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, NY 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5

U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: April 17, 1991.

L.M. BYNUM,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-9423 Filed 4-22-91; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, 1 May 1991.

ADDRESSES: The meeting will be held at the Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Becky F. Terry, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: April 17, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-9424 Filed 4-22-91; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronic) of the DOD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, 21 May 1991.

ADDRESSES: The meeting will be held at the Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Warner Kramer, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secrertary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pulbic Law No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: April 17, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 91-9425 Filed 4-22-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before May 23, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: April 17, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: New.

Title: Recordkeeping Requirements for part 3 of the Student Aid Report (Payment Voucher).

Frequency: Annually.

Affected Public: Businesses or other for-profit; small businesses or organizations.

Reporting Burden: Responses—1; *Burden Hours*—1.

Recordkeeping Burden: Recordkeepers—0; *Burden Hours*—0.

Abstract: Institutions, whose Pell Grant awards or payments have changed, must submit a Student Aid Report Payment Voucher to the Department. The Department will use the information to ensure that each institution's Pell Grant allocations are both adequate and accurate to serve its students' needs.

[FR Doc. 91-9426 Filed 4-22-91; 8:45 am]

BILLING CODE 4000-1-M

ACTION

Department of Justice

AGENCY: Department of Education.

ACTION: Notice of Agreement between ACTION and the Department of Education to Delegate Certain Civil Rights Compliance Responsibilities for Educational Institutions.

A. Purpose

Section 1-207 of Executive Order 12250 authorizes the Attorney General to initiate cooperative programs among Federal agencies responsible for enforcing Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, and similar provisions of Federal law prohibiting discrimination on the basis of race, color, national origin, sex, handicap, or religion in programs or activities receiving Federal financial assistance.

This agreement will promote consistent and coordinated enforcement of covered nondiscrimination provisions, as required in the Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs (28 CFR 42.401-42.415), increase the efficiency of compliance activity, and reduce burdens on recipients, beneficiaries, and Federal agencies by consolidating compliance responsibilities, by eliminating duplication in civil rights reviews and data requirements, and by promoting consistent application of enforcement standards.

B. Delegation

By this agreement ACTION designates the Department of Education as the agency responsible for specific civil rights compliance duties, as enumerated below, with respect to educational institutions. Responsibility for the following covered nondiscrimination provisions is delegated:

1. Title VI of the Civil rights Act of 1964, as amended (42 U.S.C. 2000d to 2000d-4); and

2. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

This agreement specifies the duties to be performed by each agency. It does not alter the requirements of the joint Department of Justice/Equal Employment Opportunity Commission (EEOC) regulation concerning procedures for handling complaints of employment discrimination filed against recipients of Federal financial assistance. 28 CFR 42.601-42.613, 29 CFR 1691.1-1697.13, 48 Federal Register 3570 (January 25, 1983). Complaints covered by that regulation filed with a delegating agency against a recipient of Federal financial assistance solely alleging employment discrimination against an individual are to be referred directly to the EEOC by the delegating agency.

C. Duties of the Department of Education

ACTION assigns the following compliance duties to the Department of Education with respect to educational institutions. Specifically, the Department of Education shall:

1. Maintain current files on all activities undertaken pursuant to this agreement and on the compliance status of applicants and recipients with respect to their programs or activities receiving Federal financial assistance resulting from preapproval and postapproval reviews, complaint investigations, and actions to resolve noncompliance. A summary of these activities and the compliance status of applicants and recipients shall be reported at least at the end of every fiscal year to ACTION.

2. Develop and use information for the routine, periodic monitoring of compliance by educational institutions with respect to their programs or activities receiving Federal financial assistance subject to this agreement.

3. Perform, upon request by ACTION, preapproval reviews for which supplemental information or field reviews are necesary to determine compliance.

4. Conduct an effective program of postapproval reviews of recipients with respect to their programs or activities receiving Federal financial assistance subject to this agreement.

5. Receive complaints alleging that recipients subject to this agreement have discriminated in violation of covered nondiscrimination provisions in their programs or activities receiving Federal financial assistance, attempt to obtain information necessary to make complaints complete, and investigate complete complaints.

6. Issue written letters of findings of compliance or of noncompliance that (a) advise the recipient and, where appropriate, the complianant of the results of the postapproval review or complaint investigation; (b) provide recommendations, where appropriate, for achieving voluntary compliance; and (c) offer, where appropriate, the opportunity to engage in negotiations for achieving voluntary compliance. The governor of the state in which the applicant or recipient is located will be notified, if the letter of findings of noncompliance is made pursuant to a statute requiring that the governor be given an opportunity to secure compliance by voluntary means. The Department of Education shall promptly provide copies of its letters of findings to ACTION and to the Assistant Attorney General for Civil Rights.

7. Conduct, after a letter of findings of noncompliance, negotiations seeking voluntary compliance with the requirements of covered nondiscrimination provisions.

8. If compliance cannot be volutarily achieved and the Department of Education does not fund the applicant or recipient, refer the matter to ACTION for its own independent action and notify the Assistant Attorney General for Civil Rights of the referral. If compliance cannot be achieved and both the Deparment of Education and ACTION fund the applicant or recipient, initiate formal enforcement action. When the Department of Education initiates formal enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, provide ACTION with an opportunity to participate as a party in a joint administrative hearing. When the Department of Education initiates formal enforcement action by referring the matter to the Department of Justice for appropriate judicial action, notify ACTION of the referral.

9. Notify ACTION and the Assistant Attorney General for Civil Rights of the outcome of the hearing, including the reasons for finding the applicant or recipient in noncompliance, and of any action taken against the applicant or recipient.

D. Duties of ACTION

ACTION shall:

1. Issue and provide to the Department of Education all regulations, guidelines, reports, orders, policies, and other documents that are needed for recipients to comply with covered nondiscrimination provisions and for the Department of Education to administer its responsibilities under this agreement.

2. Provide the Department of Education with information, technical assistance and training necessary for it to perform the duties delegated under this agreement. This information shall include, but is not limited to, a list of sponsors, which are the direct recipients of Federal financial assistance from ACTION, the types of assistance provided, compliance information solely in ACTION's possession or control, and data on program eligibility and/or actual participants in assisted programs or activities.

3. Perform preapproval reviews of applicants for assistance, as required by 28 CFR 42.407(b), that do not require supplemental information or field reviews. The reviews may require information to be supplied by the Department of Education. If ACTION requests the Department of Education to undertake an on-site review because it has shown it has reason to believe discrimination is occurring in a program or activity that is either receiving Federal financial assistance or that is the subject of an applicationn, ACTION shall supply information necessary for the Department of Education to undertake such a review.

4. Refer all complaints alleging discrimination under covered nondiscrimination provisions filed with ACTION against a recipient subject to this delegation and determine, if possible, whether the program involved receives Federal financial assistance from the delegating agency.

5. Where the Department of Education has notified the applicant or recipient in writing that compliance cannot be achieved by voluntary means and the Department of Education has referred the matter to ACTION, make the final compliance determination and:

(a) If ACTION wishes to initiate formal enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, notify the Department of Education if ACTION will either join as a party in the administrative hearing conducted by the Department of Education or will conduct its own administrative hearing.

(b) When ACTION initiates formal enforcement action by referring the matter to the Department of Justice for appropriate judicial action, notify the Department of Education of the referral.

(c) If ACTION conducts its own hearing, notify the Department of Education and the Assistant Attorney General for Civil Rights of the outcome of the hearing, including the reasons for finding the applicant or recipient in noncompliance, and of any action taken against the applicant or recipient. ACTION may request the Department of Education to act as counsel in its administrative hearing.

(d) If ACTION neither initiates steps to deny or terminate Federal financial assistance nor refers the matter to the Department of Justice, notify the Department of Education and the Assistant Attorney General for Civil Rights in writing, within 15 days after notification from the Department of Education, that voluntary compliance cannot be achieved.

E. Public Information Coordination

Subject to the Freedom of Information Act, 5 U.S.C. 552, disclosure of information to the public regarding actions implemented under this agreement will be made following consultation between ACTION and Department of Education representatives.

F. Redelegation

Duties delegated herein to the Department of Education may be redelegated. The Department of Education shall notify ACTION of any such redelegation 30 days prior to its effective date.

G. Effect on Prior Delegation

This agreement supersedes and replaces the delegation agreement effective March 22, 1966, between the U.S. Department of Health, Education, and Welfare and ACTION.

H. Approval

This agreement shall be signed by the Assistant Attorney General for Civil Rights. It shall be signed by both parties and become effective May 23, 1991.

I. Amendment and Termination

This agreement may be modified or amended by written agreement among the signatory parties. This agreement may be terminated by either agency 60 days after notice to the other agency and to the Assistant Attorney General for Civil Rights.

Dated: October 10, 1990.

Jane A. Kenny,

Director, ACTION

Dated: November 25, 1990

Lauro F. Cavazos,

Secretary, Department of Education.

Dated: March 15, 1991.

John R. Dunne,

Assistant Attorney General, Civil Rights Division.

[FR Doc. 91-9427 Filed 4-22-91; 8:45 am]

BILLING CODE 4000-01-M

Submission of Data by State Educational Agencies

AGENCY: Department of Education.

ACTION: Notice of dates for submission of State revenue and expenditure reports for fiscal year 1990 and of revisions to those reports.

SUMMARY: The Secretary of Education announces a date for the submission by State educational agencies (SEAs) of preliminary expenditure and revenue data and average daily attendance statistics for fiscal year (FY) 1990 and establishes a deadline for any revisions to that information. The setting of these dates is necessary to ensure timely distribution of Federal funds. The data will be published by the Department's National Center for Education Statistics (NCES) and will be used by the Secretary in the calculation of allocations for FY 1992 appropriated funds.

DATES: The suggested date for the submission of preliminary data was March 15, 1991. The mandatory deadline for the submission of final data is September 3, 1991.

ADDRESSES: SEAs are urged to mail ED Form 2447 (The National Public Education Financial Survey—Fiscal Year 1990) by the first date specified in this notice and shall mail final data and any revisions to preliminary data on or before the mandatory deadline date to—U.S. Department of Education, Office of Educational Research and Improvement, National Center for Education Statistics, Attention: GSAB—Fiscal Survey, 555 New Jersey Avenue, NW., Washington, DC 20208-5651.

An SEA may wish to hand deliver any revisions to room 410 of the address above by 4 p.m. (Washington, DC time) on or before the mandatory deadline date.

If an SEA's submission is received by NCES after the mandatory deadline date, in order for the submission to be accepted, the SEA must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If the SEA mails ED Form 2447 through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an SEA should check with its local post office.

FOR FURTHER INFORMATION CONTACT: Dr. William J. Fowler, Jr., at the address specified above or by telephone (202) 219–1921.

SUPPLEMENTARY INFORMATION: Under the authority of section 406(g) of the General Education Provisions Act, as amended (20 U.S.C. 1221e–1(g)), which authorizes NCES to gather data from States on the financing of elementary and secondary education, NCES collects data annually from SEAs through ED Form 2447. NCES mailed the form and instructions to SEAs in December 1990. The report from SEAs includes attendance, revenue, and expenditure data from which NCES determines the average State per pupil expenditure (SPPE) for elementary and secondary education.

In addition to providing useful statistical information, the Secretary uses SPPE data directly in calculating allocations for certain formula grant programs, including chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (chapter 1), Impact Aid, and Indian Education. Other programs such as title VII of the Stewart B. McKinney Homeless Assistance Act, the Eisenhower Mathematics and Science Education program, and the Drug Free Schools and Community Act make use of SPPE data indirectly because their formulas are based, in whole or in part, on State chapter 1 allocations.

In December 1990 NCES mailed to SEAs ED Form 2447 with instructions and requested that SEAs submit initial data to the Department by March 15, 1991. If an SEA does not submit initial FY 1990 data on ED Form 2447 on or about March 15, 1991, it should inform NCES, in writing, of the delay and the date by which it will submit FY 1990 data. Submissions by SEAs to NCES are edited by NCES and returned to each SEA for verification. NCES acknowledges that data submitted prior to September 3, 1991, may be preliminary and are subject to revision by an SEA not later than September 3, 1991.

To ensure timely distribution of Federal education funds based on the best, most accurate data available, NCES must establish, for allocation purposes, a final date by which ED Form 2447 must be submitted. However, if an SEA submits revised data after the final deadline that results in a lower SPPE figure, its allocations may be adjusted downward or the Department may request the SEA to return funds. SEAs should be aware that all of these data are subject to audit and that, if any inaccuracies are discovered in the audit process, the Department may seek recovery of overpayments for the applicable programs.

Authority: 20 U.S.C. 1221e–1(g)

Dated: April 18, 1991.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91–9492 Filed 4–22–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent to Award Grant to International Energy Agency

AGENCY: Department of Energy.

ACTION: Notice of intent to make a non-competitive financial award.

SUMMARY: The Department of Energy announces that it intends to make a non-competitive award of $65,299, under grant number DE–FG01–91FE62304, to the International Energy Agency (IEA). The purpose of this grant is to provide cofunding for the conduct of a conference grant to the 1991 International Conference on Coal Science (ICCS). The ICCS will address the field of coal science. Attention will be focused on the fundamental aspects of the various branches of coal science, provide an opportunity for researchers to present paper, and meet colleagues in similar fields in different countries. The conference is for five days and will be held September 16, 1991 through September 21, 1991 in Newcastle, United Kingdom.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn.: Linda S. Sapp, PR–321.1, 1000 Independence Avenue, SW., Washington, DC 20585, telephone no. 202–586–1030.

SUPPLEMENTARY INFORMATION: The International Energy Agency (IEA) was funded in late 1974, primarily as a U.S. initiative resulting from the Arab Oil Embargo. The Organization for Economic Cooperation and Development (OECD) was asked to take the lead in setting up IEA, and has provided staff and accommodations, primarily at its Paris headquarters. One of the main IEA objectives is developing alternative energy supplies and reducing dependence on oil by promoting research on other energy sources and their development. Several working groups were set up to consider a range of alternative energy sources including coal and nuclear power. The role of the IEA is purely organizational; it brings together interested parties and encourages cooperation but provides no funding for the resulting activities. The biennial international conference on coal science is one of the main techniques that the IEA uses in accomplishing its goals.

Jeffrey Rubenstein,

Director, Operations Division "A", Office of Placement and Administration.

[FR Doc. 91–9490 Filed 4–22–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. QF88–406–001, et al.]

Scrubgrass Generating Co. L.P., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Scrubgrass Generating Co. L.P.

[Docket No. QF88–406–001]

April 12, 1991.

On April 4, 1991, Scrubgrass Generating Company L.P., (Applicant), c/o PG&E/Bechtel Generating Company, 7475 Wisconsin Avenue, Bethesda, Maryland 20814, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located near the Village of Kennerdell, Scrubgrass Township, Venango County, Pennsylvania. The facility will consist of fluidized bed combustion boilers, a steam turbine generator and approximately 17.5 miles of 115kV transmission line. Applicant states that the primary energy source for

the facility will be waste in the form of bituminous coal refuse from multiple sources.

The facility was orginally certified as an 80 MW small power production facility (45 FERC 62,075). The instant recertification is requested to reflect an increase in the net electric power production capacity of the facility to 83 MW, the identification of other possible sources of bituminous coal refuse, and a change in ownership from Scrubgrass Power corporation to Scrubgrass Generating Company L.P. Applicant is a limited partnership whose general partners are Falcon Power Corporation (Falcon), and Pine Power Corporation. Applicant states that Falcon is indirectly owned by Pacific Gas & Electric Company, an electric utility. Applicant states that at the time the facility first produces electric energy, it will satisfy the Commission's regulations respecting 50 percent ownership limitation by electric utilities, electric utility holding companies, or any combination thereof.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. UtiliCorp United Inc.

[Docket No. ES91-24-000]

April 15, 1991.

Take notice that on April 10, 1991, UtiliCorp United Inc. (Applicant) filed an application pursuant to § 204 of the Federal Power Act seeking authority to issue up to and including 6,000,000 shares of common stock, par value $1.00 per share and an exemption from the competitive bidding requirements § 34.2(b) of the Commission's regulations.

Comment date: May 9, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. UtiliCorp United Inc.

[Docket No. ES91-25-000]

April 15, 1991.

Take notice that on April 10, 1991, UtiliCorp United Inc. (Applicant) filed an application pursuant to section 204 of the Federal Power Act seeking authority to issue up to and including $150 million of Debt Securities and an exemption from the competitive bidding requirements § 34.2(b) of the Commission's regulations.

Comment date: May 9, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Northern Carolina Electric Membership Corporation and Brunswick Electric Membership Corporation v. Carolina Power and Light Company

[Docket No. EL91-28-000]

April 16, 1991.

Take notice that on April 12, 1991, North Carolina Electric Membership Corporation and Brunswick Electric Membership Corporation (NCEMC) tendered for filing a complaint against Carolina Power and Light Company (CP&L) requesting the initiation of an investigation (1) to determine if there is any legitimate reason for CP&L refusing to provide its real-time system demand signal to NCEMC which, NCEMC claims, would not only enable NCEMC to reduce its monthly system demand but enable CP&L to reduce its system peak, (2) to determine if numerous lengthy outages at CP&L's Brunswick and Robinson Nuclear Plants were the result of imprudence and, if so, to order CP&L to refund to NCEMC all excess costs that were passed on to NCEMC through the fuel clause that were incurred by CP&L in obtaining replacement power to serve NCEMC during these outages and (3) to determine whether CP&L's present rates for wholesale firm power to the cooperatives, which are served under FERC Resale Service Schedule RS88-1B, are unjust, unreasonable and unduly discriminatory and, if so, to modify those rates to a just, reasonable and non-unduly discriminatory level. NCEMC also requests that the Commission set a refund effective date for the third issue of not more than 60 days after the filing of the complaint.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company

[Docket No. ER91-359-000]

April 16, 1991.

Take notice that on March 27, 1991, Northern States Power Company (Northern States) tendered for filing revised rate sheets to implement rate reductions pursuant to the Interim Settlement Agreement between Northern States and River Electric Association.

Comment date: April 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. EUA Power Corporation

[Docket No. ER91-373-000]

April 16, 1991.

Take notice that on April 9, 1991, EUA Power Corporation (EUA Power) filed twelve (12) Agreements for the sale of power from the Seabrook nuclear unit.

The Agreements provide for opportunity transactions from EUA Power to the following parties: Bangor Hydro-Electric Company, The Connecticut Light and Power Company, Connecticut Municipal Electric Energy Cooperative, Central Maine Power Company, Central Vermont Public Service Corporation, Fitchburg Gas and Electric Light Company, Green Mountain Power Corporation, Massachusetts Municipal Wholesale Electric Company, New England Power Company, Taunton Municipal Lighting Plant, United Illuminating Company, and UNITIL Power Corporation.

EUA Power states that the filing has been served on the affected purchasers and on the state commissions in Maine, New Hampshire, Vermont, Connecticut and Massachusetts. The company requests waiver of notice with respect to the Agreements so that they may become effective retroactively as of the effective date stated in each Agreement.

Comment date: April 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Iowa Southern Utilities Company

[Docket No. ER91-369-000]

April 16, 1991.

Take notice that on April 8, 1991, Iowa Southern Utilities Company (ISU) tendered for filing as an initial rate schedule a Transmission Agreement whereby ISU will provide transmission services to Iowa Electric Light and Power Company (IELP) during a five year term to enable IELP to receive energy from Terra Comfort Corporation (TC), an affiliate of ISU. ISU proposes an effective date of January 1, 1990, and requests waiver of the Commission's notice requirement.

A copy of the filing was served upon the Iowa State Utilities Board and IELP.

Comment date: April 26, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. UNITIL Power Corp.

[Docket No. ER89-607-000]

April 16, 1991.

Take notice that on April 8, 1991, UNITIL Power Corp. (UNITIL) Power) tendered for filing a Service Agreement pursuant to its FERC Electric Tariff, Original Volume 1, for the sale of 10,000 kilowatts capacity and associated energy to Central Vermont Public Service Corporation (CVPS) from UNITIL Power's entitlement in New Haven Harbor from May 1, 1991, through October 31, 1991.

UNITIL Power states that the Service Agreement is being filed in connection with the Purchase Agreement between UNITIL Power and CVPS filed on February 27, 1991, in Docket No. ER91–283–000.

Comment date: April 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Pennsylvania Power & Light Company

[Docket No. ER91–360–000]

April 16, 1991.

Take notice that on March 29, 1991, Pennsylvania Power & Light Company (PP&L) tendered for filing its Annual Report showing the development of charges for billings to UGI Corporation for 1990.

Comment date: April 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER91–374–000]

April 16, 1991.

Take notice that on April 10, 1991, Florida Power & Light Company (FPL), tendered for filing three Agreements entitled: (a) Restated and Revised Transmission Service Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency (Revised Transmission Agreement); (2) Partial Requirements Service Agreement Among Florida Power & Light Company, the Florida Municipal Power Agency, and the City of Clewiston (Partial Requirements Agreement) and (3) a Restated and Revised contract for Interchange Service Between Florida Power & Light Company and the Florida Municipal Power Agency (Interchange Service Agreement).

Comment date: April 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. Central Vermont Public Service Company

[Docket No. ER91–111–000]

April 16, 1991.

Take notice that on April 11, 1991, Central Vermont Public Service Corporation (CVPS) on April 11, 1991, tendered for filing supplemental financial information in the above docket.

CVPS requests the Commission waive its notice requirements to permit the rate schedules that were filed in this docket to become effective in accordance with their terms.

Comment date: April 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

12. Nantahala Power and Light Company

[Docket No. ER91–364–000]

April 16, 1991.

Take notice that on April 2, 1991, pursuant to the Settlement Agreement in Docket No. ER80–574, Nantahala Power and Light Company tendered for filing the 1990 revised "PL" (COSAC) rate tariff.

Comment date: April 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

13. PJM Group—NEH Transmission Service Agreement

[Docket No. ER91–20–000]

April 16, 1991.

Take notice that on March 20, 1991, the office of the Pennsylvania-New Jersey-Maryland (PJM) Interconnection on behalf of the members of the PJM Interconnection (PJM Group) and New England Hydro-Transmission Electric Company, Inc. (NEH) submitted an amendment to the supporting material previously submitted in this docket. The amendment provides answers to questions asked by the Commission staff.

Comment date: April 26, 1991 in accordance with Standard Paragraph E at the end of this notice.

14. Southwestern Public Service Company

[Docket No. ER85–477–008]

April 16, 1991.

Take notice that on April 8, 1991, Southwestern Public Service Company tendered for filing its amended compliance filing in this docket.

Comment date: April 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

15. Nevada Power Company

[Docket No. ER90–587–000]

April 16, 1991.

Take notice that on April 8, 1991, Nevada Power Company (NPC) tendered for filing additional information regarding NPC's amended filing in December 1990 in this docket.

Comment date: April 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

16. Orange and Rockland Utilities, Inc.

[Docket No. ER91–358–000]

April 16, 1991.

Take notice that on March 27, 1991, Orange and Rockland Utilities, Inc. ("Orange and Rockland") tendered for filing pursuant to the Federal Energy Regulatory Commission's order issued January 15, 1988, in Docket No. ER88–112–000, an executed Service Agreement between Orange and Rockland and Dickerson's Mill.

Comment date: April 26, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–9440 Filed 4–22–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP91–1787–000, et al.]

K N Energy, Inc., et al.; Natural gas certificate filings

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP91–1787–000]

April 15, 1991.

Take notice that on April 10, 1991, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP91–1787–000 a request pursuant to §§ 157.205, and 157.212 of the Commission's Regulations under the Natural Gas Act, to construct and operate on system sales taps to various end users along its pipelines, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N states that the proposed sales taps will have no significant impact on its peak and annual deliveries.

Comment date: May 30, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP91-1793-000]

April 15, 1991.

Take notice that on April 10, 1991, Arkla Energy Resources, a division of Arkla, Inc. (AER), 525 Milam Street, Shreveport, Louisiana 71151, filed in Docket No. CP91-1793-000 a request pursuant to §§ 157.205, 157.211, and 157.212 of the Commission's Regulations under the Natural Gas Act, to construct and operate certain sales tap facilities in Arkansas, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, AER proposes to construct and operate three new sales taps and related facilities in Arkansas for the delivery of gas to Arkansas Louisiana Gas Company for resale to domestic and commercial consumers. AER further states that the gas will be delivered from its general system supply, which it states is adequate to provide the service.

Comment date: May 30, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP91-1795-000]

April 15, 1991.

Take notice that on April 10, 1991, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP91-1795-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization under the blanket certificate issued in Docket No. CP82-430-000, pursuant to section 7(c) of the Natural Gas Act to construct and operate a sales tap to serve residential customers of Entex, Inc. (Entex), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to construct and operate a 1-inch farm tap on its existing 10-inch Maurice Field Line, Lafayette Parish, Louisiana, to supply residential customers of Entex with up to 175 Mcf per day of natural gas. United estimates the cost of installing the facility at $3,376, which it is indicated would be reimbursed by Entex.

United states that it is authorized to provide all of Entex's natural gas requirements for resale and distribution through Entex's distribution system serving the South Louisiana area under United's Rate Schedule DG. It is indicated that the new facility would not result in an increase in Entex's aggregate base requirements or contractual maximum daily quantity. United states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers and that its tariffs do not prohibit the addition of new delivery points.

Comment date: May 30, 1991, in accordance with Standard Paragraph G at the end of this notice.

4. Equitrans, Inc.

[Docket No. CP91-1792-000]

April 15, 1991.

Take notice that on April 10, 1991, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP91-1792-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Energy Marketing Exchange, Inc., under the blanket certificate issued in Docket No. CP86-553-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that, pursuant to an agreement dated September 25, 1989, under its Rate Schedule ITS, it proposes to transport up to 15,181 MMBtu per day equivalent of natural gas. Equitrans indicates that the gas would be transported from various receipt points on its system, and would be redelivered to various delivery points in Pennsylvania. Equitrans further indicates that it would transport 500 MMBtu on an average day and 150,000 MMBtu annually.

Equitrans advises that service under § 284.223(a) commenced February 1, 1991, as reported in Docket No. ST91-7922.

Comment date: May 30, 1991, in accordance with Standard Paragraph G at the end of this notice.

5. South Georgia Natural Gas Company, Viking Gas Transmission Company, Viking Gas Transmission Company, Panhandle Eastern Pipe Line Company, Panhandle Eastern Pipe Line Company, Panhandle Eastern Pipe Line Company

[Docket No. CP91-1741-000, Docket No. CP91-1742-000, Docket No. CP91-1743-000, Docket No. CP91-1744-000, Docket No. CP91-1745-000, Docket No. CP91-1746-000]

April 15, 1991.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: May 30, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] avg. annual	Point of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-1741-000 4-08-91	South Georgia Natural Gas Company, P.O. Box 2563, Birmingham, AL 35202-2563.	EnTrade Corporation.	5,000 5,000 1,825,000	AL	GA	2-22-91, IT	CP90-2125-000, ST91-7616-000.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] avg. annual	Point of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-1742-000 4-09-91	Viking Gas Transmission Company, P.O. Box 2511, Houston, TX 77252.	Wes Cana Energy Marketing (U.S.) Inc.	50,000 50,000 18,250,000	WI, MN, ND	WI, MN, ND	3-12-91, IT-2	CP90-273-000, ST91-7896-000.
CP91-1743-000 4-09-91	Viking Gas Transmission Company, P.O. Box 2511, Houston, TX 77252.	Manville Sales Corporation.	25,000 25,000 9,125,000	WI, MN, ND	WI, MN, ND	3-09-91, IT-2	CP90-273-000, ST91-7870-000.
CP91-1744-000 4-09-91	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX 77251-1642.	Sun Gas Transmission Limited Partnership.	20,000 20,000 7,300,000	CO, IL, KS, OK, TX	KS	3-01-91, PT	CP86-585-000, ST91-7809-000.
CP91-1745-000 4-09-91	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX 77251-1642.	Gastrak Corporation.	10,000 10,000 3,650,000	CO, IL, KS, MI, OH, OK, TX.	IN	3-01-90, PT	CP86-585-000, ST91-7807-000.
CP91-1746-000 4-09-91	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX 77251-1642.	Tex/Con Gas Marketing Company.	50,000 50,000 18,250,000	CO, IL, KS, MI, OH, OK, TX.	IN	3-01-91, PT	CP86-585-000, ST91-7808-000.

[1] Quantities are shown in dekatherms except for Docket No. CP91-1741-000 which quantities are shown in MMBtu.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

6. Northern Natural Gas Company

[Docket No. CP91-1734-000]

April 15, 1991.

Take notice that on April 8, 1991, Northern Natural Gas Company, (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP91-1734-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Northern to operate and maintain certain pipeline facilities which were constructed under section 311 of the Natural Gas Policy Act of 1978 as jurisdictional facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that the following facilities were previously installed and operated by Northern pursuant to section 311 of the Natural Gas Policy Act: (1) About 30.6 miles of 24-inch pipeline (Janesville Line) starting in Rock County, Wisconsin and ending in Waukesha County; (2) about 4.51 miles of 12-inch pipeline starting at the Janesville Line in Rock County and ending at the Janesville/Beloit facility in Rock County; (3) eleven farm taps; (4) three town border stations and (5) various metering and appurtenant facilities. Northern proposes to use these facilities located in Wisconsin as jurisdictional facilities in order for Northern to provide interruptible sales of surplus system supply gas, firm sales services and transportation of natural gas pursuant to subpart G of part 284, to various customers located in Wisconsin.

Northern maintains that the existing facilities would also be used for existing system requirements as well as growth in various markets and would enable shippers to diversify their supply options.

Comment date: May 6, 1991, in accordance with Standard Paragraph F at the end of this notice.

7. National Fuel Gas Supply Corporation, National Fuel Gas Supply Corporation, National Fuel Gas Supply Corporation, National Fuel Gas Supply Corporation, National Fuel Gas Supply Corporation

[Docket No. CP91-1763-000, Docket No. CP91-1764-000, Docket No. CP91-1765-000, Docket No. CP91-1766-000, Docket No. CP91-1767-000]

April 15, 1991.

Take notice that the above referenced company (Applicant) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: May 30, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper Name	Peak day [1], average annual	Points of		Start up date, rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-1763-000 4-9-91	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203	The Electric Materials Co.	400 400 146,000	NY, PA, OH	NY, PA, OH	2-1-91, IT-1	CP89-1582-000, ST91-7341-000.
CP91-1764-000 4-9-91	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203	Highland Land & Minerals, Inc.	33 33 12,045	NY, PA, OH	NY, PA, OH	2-1-91, IT-1	CP89-1582-000, ST91-7396-000.
CP91-1765-000 4-9-91	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203	Commodore Gas Co.	3,000 3,000 1.095,000	NY, PA, OH	NY, PA, OH	2-13-91, IT-1	CP89-1582-000, ST91-7483-000.
CP91-1766-000 4-9-91	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203	Westvaco Corporation	500 500 182,500	NY, PA, OH	NY, PA, OH	2-1-91, IT-1	CP89-1582-000, ST91-7413-000.
CP91-1767-000 4-9-91	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203	Entrade Corporation	100,000 100,000 36,500,000	NY, PA, OH	NY, PA, OH	2-1-91, IT-1	CP89-1582-000, ST91-7424-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

8. Southern Natural Gas Company United Gas Pipe Line Company Algonquin Gas Transmission Company

[Docket No. CP91-1810-000; Docket No. CP91-1813-000; Docket No. CP91-1814-000; Docket No. CP91-1815-000; Docket No. CP91-1816-000; Docket No. CP91-1817-000; and Docket No. CP91-1818-000]

April 16, 1991.

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: May 31, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1810-000 (4-12-91)	City of Dawson, Georgia (LDC).	609 609 222,285	OTX, OLA, TX, LA, MS, AL.	AL	2-20-91, FT, Firm	ST91-7991-000, 3-1-91.
CP91-1813-000 (4-12-91)	Graham Energy, Marketing Corp. (Marketer).	123,600 123,600 45,114,000	Various	Various	11-9-88,[3] ITS, Interruptible.	ST91-7995-000, 3-14-91.
CP91-1814-000 (4-12-91)	Citizens Gas Supply Corporation.	150,000 150,000 54,750,000	MA, NY, CT, NJ	NJ [4]	1-16-91, AIT-1, Interruptible.	ST91-7650-000, 1-17-91.
CP91-1815-000 (4-12-91)	Ocean State Power (Marketer).	100,000 100,000 36,500,000	MA, NJ	RI	10-25-90, AIT-1, Interruptible.	ST91-7908-000, 2-23-91.
CP91-1816-000 (4-12-91)	Entrade Corporation (Marketer).	10,000 10,000, 3,650,000	MA, NJ	CT	12-5-90, AIT-1, Interruptible.	ST91-7907-000, 3-1-91.
CP91-1817-000 (4-12-91)	O&R Energy, Inc. (Marketer).	100,000 100,000 36,500,000	NY, NJ	MA	2-21-91, AIT-1, Interruptible.	ST91-7910-000, 3-12-91.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1818-000 (4-12-91)	Brooklyn Interstate Natural Gas Corp. (Marketer).	900,000 900,000 328,500,000	MA, NY, NJ	RI	1-22-91, AIT-1, Interruptible.	ST91-7906-000, 2-21-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Southern's quantities are in Mcf.
[3] As amended.
[4] Algonquin states that the gas would be delivered to Transcontinental Gas Pipe Line Corporation for the account of Citizens.

Applicant's address	Blanket docket
Algonquin Gas Transmission Company, 1284 Soldiers Field Road, Boston, Massachusetts 02135.	CP89-948-000
Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563.	CP88-316-000
United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478.	CP88-6-000

9. Colorado Interstate Gas Company CNG Transmission Corporation Northern Natural Gas Company

Docket Nos. CP91-1804-000 [4], CP91-1805-000, and CP91-1806-000

April 16, 1991.

Take notice that on April 12, 1991, Applicants filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: May 31, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No.	Applicant	Shipper name	Peak day [1], avg. annual	Points of [2] Receipt	Points of [2] Delivery [2]	Start up date, rate, schedule	Related [3] dockets
CP91-1804-000 (4-12-91)	Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, CO 80944.	Associated Intrastate Pipeline Company.	50,000Mcf 10,000Mcf 3,650,000Mcf	CO, KS, OK, WY	OK	2-1-91, TI-1	CP86-589-000, ST91-6973,000.
CP91-1805-000 (4-12-91)	CNG Transmission Corporation, 445 West Main St., Clarksburg, WV 26302-2450.	Enron Gas Marketing, Inc.	50,000Dt 25Dt 9,125Dt	NY, PA, WV	PA	3-2-91, TI	CP86-311-000, ST91-7967-000.
		Enron Gas Marketing, Inc.	50,000Dt 25Dt 9,125Dt	NY, PA, WV	NY, OH, PA	3-2-91, TI	CP86-311-000, ST91-7974-000.
		Enron Gas Marketing, Inc.	50,000Dt 25Dt 9,125Dt	NY, PA, WV	PA	3-2-91, TI	CP86-311-000, ST91-7973-000.
		O & R Energy Inc.	15,000Dt 1,738Dt 634,370Dt	PA	PA	3-5-91, TI	CP86-311-000, ST91-7972-000.
		Panhandle Trading Company.	200,000Dt 24Dt 8,760Dt	OH	NY, OH, PA	3-15-91, TI	CP86-311-000, ST91-7970-000.
		Panhandle Trading Company.	200,000Dt 24Dt 8,760Dt	OH	PA	3-15-91, TI	CP86-311-000, ST91-7971-000.
		Panhandle Trading Company.	200,000Dt 24Dt 8,760Dt	OH	PA	3-15-91, TI	CP86-311-000, ST91-7968-000.
		Panhandle Trading Company.	200,000Dt 24Dt 8,760Dt	OH	PA	3-15-91, TI	CP86-311-000, ST91-7969-000.
		Consolidated Fuel Corporation.	4,500Dt 611Dt 73,320Dt	NY, PA, WV	WV	2-1-91, TI	CP86-311-000, ST91-7911-000.

Docket No.	Applicant	Shipper name	Peak day [1], avg. annual	Points of [2] Receipt	Points of [2] Delivery [2]	Start up date, rate, schedule	Related [3] dockets
		Consolidated Fuel Corporation.	10,000Dt 795Dt 95,400Dt	NY, PA, WV	NY	2-1-91, TE	CP86-311-000, ST91-7912-000.
		Albany Cogeneration Associates.	6,274Dt 6,086Dt 730,320Dt	NY, PA, WV	NY	2-1-91, TF	CP86-311-000, ST91-7913-000.
		Texas-Ohio Gas, Inc. Corporation.	3,000Dt 40Dt 4,800Dt	PA	NY	2-8-91, TI	CP86-311-000, ST91-7914-000.
		Brooklyn Interstate Natural Gas Corp.	20,000Dt 306Dt 36,720Dt	NY, PA, WV	PA	2-9-91, TI	CP86-311-000, ST91-7915-000.
		O & R Energy Inc.	15,000Dt 4,933Dt 591,960Dt	NY, PA, WV	NY, OH, PA	2-16-91, TI	CP86-311-000, ST91-7916-000.
CP91-1806-000 (4-12-91)	Northern Natural Gas Company P.O. Box 1188 Houston, TX 77251-1188.	Delhi Gas Pipeline Corporation.	100,000 75,000 36,500,000	IA, KS, MN, NE, NM, OK, TX, WI.	KS, OK, TX	2-28-91, IT-1	CP86-435-000, ST90-7856-000.

[1] Quantities are shown in MMBtu unless otherwise noted.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[3] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.20). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-9428 Filed 4-22-91; 8:45 am]

BILLING CODE 6717-01-M

Natural Gas Data Collection System; Revised Print Software for the FERC Form No. 2

[Docket No. RM87-17-000]

Issued April 16, 1991.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Availability of Revised Print Software for the FERC Form No. 2.

SUMMARY: Both PC and mainframe versions of the revised software are now available for printing the structured data file of the FERC Form No. 2 (Annual Report of Major Natural Gas Companies). This software has been developed for Commission use and to assist pipelines in complying with the electronic submission requirement for filing the FERC Form No. 2 in accordance with Order Nos. 493 (53 FR 15,025 (Apr. 27, 1988)), 493-A (53 FR 30,027 (Aug. 10, 1988)), and 493-B (53 FR 49,652 (Dec. 9, 1988)). A User/Operations Manual (applicable to the FERC Form Nos. 2, 2-A, and 16) is available on diskette and/or in hardcopy. Separate order forms are attached for requesting either the mainframe version (source code) or the PC version (executable code) of the software.

DATES: The software, User/Operations Manual, and the revised record formats are available on April 16, 1991.

ADDRESSES: Requests for the software and the documentation should be directed to: Reference and Information Center, Federal Energy Regulatory Commission, 941 North Capitol Street, NE., room 3308, Washington, DC 20426, (202) 208-1371.

FOR FURTHER INFORMATION CONTACT: Craig Hill at (202) 208-1222.

SUPPLEMENTARY INFORMATION: PC software (executable code) is now available to provide for printing the structured data file of the FERC Form No. 2 when filed in accordance with the instructions and record formats revised on February 11, 1991. A complete directory of files found on each diskette

is listed in Appendix A. A User/Operations Manual (applicable to the FERC Form Nos. 2, 2–A, and 16) is available in hardcopy and on diskette in WordPerfect 5.1 or ASCII format.

The print software was written in the COBOL programming language. The software can be run on an IBM-compatible PC with DOS 3.0 (or later version) and at least 640K of RAM. The software is available on a 3.5" (1.44MB) or a 5.25" (1.2MB) double-sided, high density diskette.

The software has been tested by staff. However, if problems occur relating to the software, the Commission staff encourages users to submit written comments as to the exact nature of the problem to Craig Hill, room 6106, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

The mainframe source code for printing a hardcopy of the FERC Form No. 2 is available separately on 9-track magnetic tape (1600 BPI or 6250 BPI) or 18-track cartridge (6250 BPI). There is no charge for the source code, however, each request must be accompanied by a 9-track magnetic tape or 18-track cartridge with an external label affixed containing company name, mailing address, telephone number and contact person. FERC will initialize the requestor's tape or cartridge, and copy the source code for hard copy printing to the tape/cartridge. Please specify either IBM or ANSI Standard labels. Persons requesting the mainframe source code should fill out the attached Order Form for the FERC Form No. 2 Hardcopy Print Source Code.

This notice is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that provides access to formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a modem. Your communications software should be set at full duplex, no parity, eight data bits and one stop bit. To access CIPS at 300, 1200 or 2400 baud dial (202) 208–1397. For access at 9600 baud, dial (202) 208–1781. FERC is using U.S. Robotics HST Dual Standard modems. If you have any problems in obtaining a copy of this notice through CIPS, please call (202) 208–2474. This notice will be available on CIPS for 30 days from the date of issuance.

In addition to publishing the text of this notice in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice during normal business hours in the Reference and Information Center (room 3308) at the Commission's headquarters, 941 North Capitol Street, NE., Washington, DC 20426.

The PC software is available from the Commission's copy contractor, LaDorn Systems Corporation ((202) 898–1151), located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426. Persons requesting the software may fill out an attached Order Form.[1] The software is available without charge. However, the Commisssion's copy contractor has a copy fee of $6.00 per 3.5" diskette and $5.00 per 5.25" diskette. The User's Manual is also available in hardcopy at 20 cents per page.

Lois D. Cashell,

Secretary.

Appendix A—Directory of Files for Each Diskette

Note: A detailed crosswalk between the program names, record formats, and specific pages in the hardcopy of the Form No. 2 is provided in appendix B of the *User's Manual.*

Diskette #1:		
FORM2 BAT	1684	Bat File.
FORMTWO EXE	208336	Driver.
F2SUBDRV EXE	44704	Subdriver.
FM2F4A EXE	148032	Form 2 Schedule F4.
FM2F4B EXE	137072	Do.
FM2F4C EXE	72960	Do.
FM2F5A EXE	56368	Form 2 Schedule F5.
FM2F5B EXE	88400	Do.
FM2F5C EXE	92112	Do.
FM2F5D EXE	54288	Do.
FM2F5E EXE	109360	Do.
FM2F5D EXE	115616	Do.
Diskette #2:		
FM2F5G EXE	116192	Form 2 Schedule F5.
FM2F5H EXE	118752	Do.
FM2F5I EXE	153744	Do.
FM2F5IX EXE	148576	Do.
FM2F5J EXE	111424	Do.
FM2F5K EXE	110016	Do.
FM2F6A EXE	61936	Form 2 Schedule F6.
FM2F6B EXE	112000	Do.
FM2F6C EXE	83680	Do.
Diskette #3:		
FM2F6D EXE	92528	Form 2 Schedule F6.
FM2F6E EXE	129616	Do.
FM2F6F EXE	55104	Do.
FM2F6G EXE	56688	Do.
FM2F6H EXE	98160	Do.
FM2F6I EXE	77712	Do.
FM2F7A EXE	192704	Form 2 Schedule F7.
FM2F7B EXE	118512	Do.
FM2F7C EXE	101616	Do.
FM2F7D EXE	66192	Do.
FM2F7E EXE	61536	Do.
FUG 2	58681	User's Manual in WordPerfect 5.1.
FUG ASC	49283	User's Manual in ASCII.

[1] The forms are not being published in the **Federal Register**, but are are available as attachments to copies of this notice obtainable from the Commission's Reference and Information Center.

[FR Doc. 91–9439 Filed 4–22–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR91–14–000]

Acacia Natural Gas Corp. Petition for Rate Approval

April 17, 1991.

Take notice that on March 29, 1991, Acacia Natural Gas Corporation filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of 19.42 cents per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Acacia states that it is an intrastate pipeline in Oklahoma and operates a gathering system of approximately 138 miles of various sized pipelines ranging in size from 4" to 12" in diameter in addition to two compressor units. Acacia's previous maximum interruptible transportation rate of 14.5 cents per Mcf for section 3119(a)(2) service was approved by the Commission August 1, 1989 in Docket No. ST88–5804–000.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before May 7, 1991. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–9437 Filed 4–22–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91-33-004]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

April 17, 1991.

Take notice that ANR Pipeline Company ("ANR") on April 11, 1991 tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Sixth Revised Sheet No. 116, proposed to be effective May 1, 1991.

ANR states that the referenced tariff sheet is being submitted to correct a typographical error in ANR's compliance filing submitted in this proceeding on April 2, 1991.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before April 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-9436 Filed 4-22-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-136-000]

Centra Pipelines Minnesota Inc.; Proposed Changes in FERC Gas Tariff

April 17, 1991.

Take notice that on April 15, 1991, Centra Pipelines Minnesota Inc. (Centra), 245 Yorkland Boulevard, North York Ontario M2J 1R1, tendered for filing the following revised tariff sheets to First Revised Original Volume No. 2 of its FERC Gas Tariff:

First Revised Sheet No. 1
First Revised Sheet No. 2
First Revised Sheet No. 3
First Revised Sheet No. 4
First Revised Sheet No. 5
First Revised Sheet No. 6
First Revised Sheet No. 7
First Revised Sheet No. 8
First Revised Sheet No. 9
First Revised Sheet No. 10
First Revised Sheet No. 11
First Revised Sheet No. 12
First Revised Sheet No. 13
First Revised Sheet No. 14
First Revised Sheet No. 15
First Revised Sheet No. 16
First Revised Sheet No. 17
First Revised Sheet No. 18
First Revised Sheet No. 19
First Revised Sheet No. 20
First Revised Sheet No. 21
First Revised Sheet No. 22
First Revised Sheet No. 23
First Revised Sheet No. 24
First Revised Sheet No. 25
First Revised Sheet No. 26
First Revised Sheet No. 27
First Revised Sheet No. 28
First Revised Sheet No. 29
First Revised Sheet No. 30
First Revised Sheet No. 31

Centra also tendered for filing the following alternate tariff sheets:

Alternate First Revised Sheet No. 4
Alternate First Revised Sheet No. 6

Alternate First Revised Sheet No. 7

Centra states that the purpose of the filing is to restate its base rates to reflect an increase of $216,840 in overall cost of service. Centra also states that the filed tariff sheets also: (1) Reflect the recent name change of the pipeline from InterCity Minnesota Pipelines Ltd. Inc. to Centra Pipelines Minnesota Inc.; (2) change cost allocation/rate design from modified fixed-variable to fixed-variable; (3) reword the pipeline qualify specifications to mirror quality on its system to that on the TransCanada Pipelines system which is upstream of Centra; and (4) combine the presently identical services and rates of its FT-1 and FT-2 service into a new FT service.

The alternate tariff sheets reflect the rates and tariff language of the currently used modified fixed-variable rate design.

Central requests an effective date of April 12, 1991 and seeks waiver of any Commission regulations necessary to reflect the proposed changes on that date or to otherwise implement the filing.

Centra states that a copy of Centra's filing has been served on each of its three customers and on the Minnesota Public Utilities Commission. Centra also states that copies are also available for inspection at the pipeline offices.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-9430 Filed 4-22-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-736-003]

Chevron Natural Gas Services, Inc.; Application for Extension of Blanket Limited-Term Certificate With Pregranted Abandonment

April 17, 1991.

Take notice that on April 8, 1991, Chevron Natural Gas Services, Inc. of P.O. Box 3725, Houston, Texas 77253-3725 (Applicant), filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend its blanket limited-term certificate with pregranted abandonment previously issued by the Commission in Docket No. CI87-736-002 for a term expiring March 31, 1991 to extend the term of such authorization, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before April 24, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-9438 Filed 4-22-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-69-005]

Colorado Interstate Gas Co.; Motion Rates

April 16, 1991.

Take notice that on March 29, 1991, Colorado Interstate Gas Company (CIG) filed with the Federal Energy Regulatory Commission a motion to place into effect rates which reflect a portion of the increase that CIG filed to collect, and that the Commission accepted by its order issued January 31, 1990, in Docket No. RP90-69-000. CIG states that it is implementing an increase amounting to only about one-half of the increase that it is entitled to collect under the Commission's January 31, 1990 order.

CIG states that it has served its motion by first class mail upon all persons designated in the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before April 22, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-9429 Filed 4-22-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP73-65-027]

Columbia Gas Transmission Corp.; Report of Refunds

April 17, 1991.

Take notice that Columbia Gas Transmission Corporation (Columbia) on February 28, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) its report of refunds, made in accordance with the Commission's February 29, 1988 order directing Columbia to flow through refunds received from Ozark Gas Transmission System (Ozark) on an annual basis.

Columbia states that the refund represents the total amount received from Ozark through billing credits for the period September 1989 through September 1990, in accordance with the Commission's August 3, 1987 order approving a Stipulation and Consent Agreement in Docket No. IN86-6. Columbia notes that the distribution of refunds is in accordance with the allocation based on purchases during the period March 1, 1982 through August 3, 1987.

Columbia states that a copy of the detail of each customer's calculation has been mailed to each respective jurisdictional customer and that copies of the report have been mailed to interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before April 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection

Lois D. Cashell,

Secretary.

[FR Doc. 91-9431 Filed 4-22-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-3-2-001]

East Tennessee Natural Gas Co.; Compliance Filing

April 17, 1991.

Take notice that East Tennessee Natural Gas Company (East Tennessee) on April 10, 1991, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Second Revised Sheet No. 6, effective May 1, 1991.

East Tennessee states that the referenced tariff sheet is being submitted to correct an error that exists in East Tennessee's Second Revised Sheet No. 6, which was filed with the Commission on March 29, 1991, in Docket No. TM91-3-2-000. East Tennessee states that the error consists of a transportation of numbers related to Newport's Demand Surcharge.

East Tennessee states that the tariff sheet is being filed to correct the Demand Surcharge for Newport, and that no other changes have been made.

East Tennessee notes that copies of the filing have been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before April 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-9434 Filed 4-22-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-86-017]

K N Energy, Inc.; Compliance Filing

April 17, 1991.

Take notice that K N Energy, Inc. (K N) on April 12, 1991, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1-A, First Revised Sheet No. 22, effective April 1, 1991.

K N states that the referenced tariff sheet is being submitted as a substitute for the First Revised Sheet No. 22 that was filed on March 26, 1991, in compliance with the Commission's Order Approving Uncontested Settlement issued February 25, 1991. K N states that the only alteration made to the sheet is a modification to section 10.2 to substitute the word "reasonable" in place of "sole" in order to make the tariff sheet conform with the remainder of tariff sheets submitted as part of such compliance filing.

K N states that the filing has been served upon all parties of record in the above referenced proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before April 24, 1991. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-9435 Filed 4-22-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-111-001]

North Penn Gas Co.; Compliance Filing

April 17, 1991.

Take notice that North Penn Gas Company (North Penn) on April 12, 1991 tendered for filing the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Effective April 1, 1991

Substitute Third Revised Sheet No. 15H1

Effective April 1, 1991

Substitute First Revised Sheet No. 15H1a

Effective April 1, 1991

Second Revised Sheet No. 15H2

North Penn states that this filing is being made in compliance with the Commission's order dated March 29, 1991 in the above referenced docket to correct certain pagination problems and to cancel the following tariff sheets:

First Revised Sheet No. 15H(2)
First Revised Sheet No. 15H(3)
Alternate Original Sheet No. 15H(4)
Original Sheet No. 15H(5)
Original Sheet No. 15H(5)(a)
Original Sheet No. 15H(5)(b)
Original Sheet No. 15H(5)(c)
Original Sheet No. 15H(5)(d)
Original Sheet No. 15H(5)(e)
Original Sheet No. 15H(5)(f)
Original Sheet No. 15H(5)(g)
Original Sheet No. 15H(5)(h)
Original Sheet No. 15H(5)(i)
Original Sheet No. 15H(5)(j)

North Penn requests waiver of any of the Commission's Rules and Regulations as may be deemed necessary in order to permit the proposed tariff sheets to become effective April 1, 1991.

North Penn states that copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and state commissions shown on the attached service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before April 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-9432 Filed 4-22-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-107-001]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 17, 1991.

Take notice that Williams Natural Gas Company (WNG) on April 15, 1991, tendered for filing Substitute First Revised Sheet Nos. 260-262 to its FERC Gas Tariff, First Revised Volume No. 1 to be effective March 31, 1991.

WNG states that Substitute First Revised Sheet No. 260 is being filed in compliance with the Commission Order issued March 29, 1991 in Docket No. RP91-107-000. Substitute First Revised Sheet Nos. 261 and 262 are being filed for pagination purposes only.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before April 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-9433 Filed 4-22-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59294B; FRL-3891-2]

Certain Chemical; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-91-9. The test marketing conditions are described below.

EFFECTIVE DATE: April 16, 1991.

FOR FURTHER INFORMATION CONTACT: William B. Lee, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, rm. E-613A, 401 M St. SW., Washington, DC 20460, (202) 382-3769.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-91-9. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-91-9. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain

the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME-91-9

Date of Receipt: February 22, 1991.

Notice of Receipt: March 13, 1991 (56 FR 10556).

Applicant: Stepan Company.

Chemical: (G) Alkylated diesters.

Use: (S) Lubricants, oil additives and emulsifers.

Production Volume: 10,000 lbs.

Number of Customers: 8.

Test Marketing Period: 1.5 years, commencing on first day of commercial manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: April 16, 1991.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 91-9485 Filed 4-22-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-140147; FRL-3688-7]

Access to Confidential Business Information by Techlaw, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Techlaw, Incorporated (TCH), of Lakewood, Colorado, for access to information which has been submitted to EPA under sections 4, 5, 6, 8, 12, and 13 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than May 3, 1991.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under contract number 68-W0-0001, contractor TCH, of 12600 West Colfax Avenue, Suite C310, Lakewood, CO, will assist the Office of Compliance Monitoring (OCM) and the National Enforcement Investigations Center (NEIC) in consolidating Regional and EPA Headquarters evidentiary files resulting from investigations and subpoenas, and in monitoring the provisions of settlement agreements.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68-W0-0001, TCH will require access to CBI submitted to EPA under sections 4, 5, 6, 8, 12, and 13 of TSCA to perform successfully the duties specified under the contract. TCH personnel will be given access to information submitted to EPA under sections 4, 5, 6, 8, 12, and 13 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 8, 12, and 13 of TSCA that EPA may provide TCH access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and TCH's Lakewood, CO facility only.

TCH has been authorized access to TSCA CBI at its facility under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved TCH's security plan and has performed the required inspection of its facility and has found the facility to be in compliance with the manual. Upon completing review of the CBI materials, TCH will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until December 31, 1991.

TCH personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: April 15, 1991.

Linda A. Travers,

Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-9486 Filed 4-22-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

April 15, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 114 21st Street, NW, Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0066.

Title: Application for Renewal of Instructional Television Fixed Station and/or Response Station(s) and Low Power Relay Station(s) License.

Form Number: FCC Form 330-R.

Action: Revision.

Respondents: State or local governments and non-profit institutions.

Frequency of Response: Other: once every 10 years.

Estimated Annual Burden: 40 responses; 2.5 hours average burden per response; 100 hours total annual burden.

Needs and Uses: The FCC Form 330-R is used by licensees of Instructional Television Fixed (ITFS), Response, and Low Power Relay Stations to file for renewal of their licenses. The Policy Statement Regarding Character Qualifications in Broadcast Licensing concerning adjudicated or pending litigations of relevant misconduct by broadcast applicants have been incorporated into the revised form. The data is used by FCC staff to ensure that the licensee continues to meet basic Commission policies and rules, as well as statutory requirements to remain a licensee of an ITFS station.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-9398 Filed 4-22-91; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

April 16, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0017.

Title: Application for Low Power TV, TV Translator or TV Booster Station License.

Form Number: FCC Form 347.

Action: Revision.

Respondents: Individuals or households, state or local governments, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 198 responses; 2.5 hours average burden per response; 495 hours total annual burden.

Needs and Uses: The FCC Form 347 is used by permittees of low power television, TV translator or TV booster stations to apply for a station license. The FCC Form 347 has been revised to include fee processing data and character qualifications questions concerning adjudicated actions or pending adjudications of relevant misconduct by broadcast applicants. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit. Data is then extracted from the FCC Form 347 for inclusion in the subsequent license to operate the station.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-9399 Filed 4-22-91; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for two FM stations:

Applicant, city and state	File No.	MM Docket No.
I		
A. Port St. Lucie Broadcasting Limited Partnership; Port St. Lucie, FL.	BPH-891016MK	91-83
B. St. Lucie Radio Corporation; Port St. Lucie, FL.	BPH-891017MC	
C. Port St. Lucie Communications, Inc.; Port St. Lucie, FL.	BPH-891018MC	
D. Richard M. Carrus; Port St. Lucie, FL.	BPH-891018MD	
E. Cityron Corp.; Port St. Lucie, FL.	BPH-891018ME	
F. Port St. Lucie Broadcasting Corporation; Port St. Lucie, FL.	BPH-891018MF	
G. Blue Rainbow Broadcast System, Inc.; Port St. Lucie, FL.	BPH-891018MG	
H. St. Lucie Progressive Media, Inc.; Port St. Lucie, FL.	BPH-891018MH	
I. Horton Broadcasting Company, Inc.; Port St. Lucie, FL.	BPH-891018MI	
J. Premier Network Broadcast Limited Partnership; Port St. Lucie, FL.	BPH-891018MM	
K. Evett Communications, Inc.; Port St. Lucie, FL.	BPH-891018MN	
L. Sue K. Schmidt; Port St. Lucie, FL.	BPH-891018MO	
M. Frank J. Banks d/b/a Banks Investment Company; Port St. Lucie, FL.	BPH-891018MQ	
N. Dean Communications, Inc.; Port St. Lucie, FL.	BPH-891018MR	
O. Surfside Broadcasting, a General Partnership; Port St. Lucie, FL.	BPH-891018MS	
P. Douglas Johnson; Port St. Lucie, FL.	BPH-891018MT	
Q. St. Lucie Broadcasting, Inc.; Port St. Lucie, FL.	BPH-891018MU	
R. Salsa Radio Limited; Port St. Lucie, FL.	BPH-891018MV	
Issue Heading and Applicant(s)		
1. (See Appendix), A		
2. (See Appendix), A		
3. (See Appendix), A		
4. Financial Qualifications, J		
5. City Coverage—FM, O		
6. Air Hazard, A,C,D		
7. Comparative, All		
8. Ultimate, All		
II		
A. Caddo Broadcasting Co.; Hot Springs Village, AR.	BPH-891016ML	91-82
B. The River Broadcasting Co., Inc.; Hot Springs Village, AR.	BPH-891109MH	
Issue Heading and Applicant(s)		
1. Comparative, A,B		
2. Ultimate, A,B		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (telephone 202-452-1422).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

1. To determine whether, as of February 9, 1990, PSL Limited's organizational structure was a sham.

2. To determine, from the evidence adduced pursuant to Issue 1, above, whether PSL Limited made a material misrepresentation in certifying to the Commission that "no limited partner will be involved in any material respect in the management or operation of the proposed station."

3. To determine, from the evidence adduced pursuant to Issues 1 and 2, above, whether PSL Limited possesses the basic qualifications to be licensee of the facilities sought herein.

[FR Doc. 91-9400 Filed 4-22-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-011324-001.

Title: Transpacific Space Utilization Agreement.

Parties: American President Lines, Ltd., Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd., Neptune Orient Lines, Ltd., Nippon Liner System, Ltd., Nippon Yusen Kaisha, Ltd., Sea-Land Service, Inc., Independent Carrier Parties: Evergreen Marine Corporation, Hyundai Merchant Marine Co., Ltd., Orient Overseas Container Line, Yang Ming Lines.

Synopsis: The proposed amendment would add Hanjin Shipping Co., Ltd. as a party to the Agreement.

By order of the Federal Maritime Commission.

Dated: April 17, 1991

Joseph C. Polking,

Secretary.

[FR Doc. 91-9422 Filed 4-22-91; 8:45 am]

BILLING CODE 6730-01-M

GENERAL ACCOUNTING OFFICE

Government Auditing Standards Advisory Council Meeting

AGENCY: General Accounting Office.

ACTION: Notice.

SUMMARY: The United States General Accounting Office has scheduled a meeting of the Government Auditing Standards Advisory Council on April 19, 1991, from 8:30 a.m. until 3 p.m. in room 7313 of the General Accounting Office, 441 G St., NW., Washington, DC.

The agenda for the meeting will consist of organizational matters as this will be the initial meeting of the Council. The Council will discuss its mission statement, the standards-setting process, and possible issues for consideration by the Council.

Any interested person may attend the meeting as an observer.

FOR FURTHER INFORMATION CONTACT: Patrick McNamee, Assistant Director, U.S. General Accounting Office, 7 World Trade Center, 25th Floor, New York, NY 10048 or call (212) 264-0979.

DATE: April 29, 1991.

ADDRESS: 441 G St., NW., room 7313, Washington, DC 20548.

Dated: April 17, 1991.

Donald H. Chapin,

Assistant Comptroller General.

[FR Doc. 91-9395 Filed 4-22-91; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of May 1991:

NAME: Commission on the National Nursing Shortage.

DATE AND TIME: May 15, 1991, 9 a.m.

PLACE: Room 503A HHH Building, 200 Independence Avenue, SW., Washington, DC 20201.

The meeting is open to the public.

PURPOSE: The Commission advises the Secretary, the Assistant Secretary for Health, and the Administrator, Health Resources and Services Administration on specific projects implementing the recommendations of the Secretary's Commission on Nursing. These projects should attempt optimal utilization of available resources and expertise from Federal, State, and local government and private sector organizations.

The recommended projects will target the following five focus areas: (1) Recruitment and the educational pathway; (2) retention and career development; (3) restructuring nursing services and effective utilization of nursing personnel; (4) data collection and analysis requirements; and (5) information systems and related technology in nursing.

In each focus area, the Commission shall formulate one targeted initiative designed to improve the imbalance in the nursing labor market and provide a model for broader endeavors. In addition, the Commission shall investigate ways to promote and identify specific commitments from private sector organizations and State and local government for fulfilling the projects.

AGENDA: The Commission will review the projects which have been developed and a draft of the Final Report.

Time will be allowed for public comment.

Anyone requiring information regarding the subject, Council should contact Dr. Caroline B. Burnett, Senior Consultant, Commission on the National Nursing Shortage, Health Resources and Service Administration, room 7-90, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3499.

Agenda Items are subject to change as priorities dictate.

Dated: April 18, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91-9474 Filed 4-22-91; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-91-3254]

Privacy Act of 1974; Proposed Amendment to a System of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notification of a proposed amendment to an existing system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), HUD proposes to amend a system of records entitled "Ethics Filings, HUD/DEPT-81." Notice of the system was published on September 28, 1990 (55 FR 39739).

The system notice has been amended to include certain information submitted to the Department in accordance with section 102 of the HUD Reform Act of 1989. Under section 102 any applicant who has received, or can reasonably be expected to receive, an aggregate amount of all forms of assistance within the jurisdiction of the Department in excess of $200,000 during the Federal

fiscal year in which an application is submitted, must disclose the following information: other Government assistance received, the names and pecuniary interests of persons interested in the project, and expected sources and uses of funds available for the project. The categories of records in the system and routine uses have been revised to reflect the addition of section 102 information.

The information collected under section 102 will enable HUD to comply with legislative requirements aided at ensuring greater accountability and integrity in HUD's grant and loan processes.

EFFECTIVE DATE: This proposal shall become effective without further notice in 30 calendar days (May 23, 1991) unless comments are received during or before that date which would result in a contrary determination.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel. Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708–4337. Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 708–2084). [These are not toll-free numbers.]

FOR FURTHER INFORMATION CONTACT: For Privacy Act: Donna L. Eden, Departmental Privacy Act Officer, Telephone Number (202) 708–0050. For Program: Arnold J. Haiman, Acting Director, Office of Ethics, Telephone Number (202) 708–3815. [These are not toll-free numbers.]

A report of the Department's intention to amend the system has been submitted to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

The system description is printed below.

Issued at Washington, DC April 9, 1991.

Jim Tarro,

Assistant Secretary for Administration.

HUD/DEPT–81

SYSTEM NAME:

Ethics Filings.

SECURITY CLASSIFICATION:

Sensitivity—S2. Disclosure or alteration of data rated S2 represents a small but unimportant risk to the organization and its mission.

Criticality—C2. Since systems rated C2 will be needed eventually, security officers should write a contingency plan. Management should attempt recover only after restoring the more critical systems.

SYSTEM LOCATION:

Headquarters, Office of Ethics.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Section 102

Any applicant that submits an application for assistance within the jurisdiction of the Department to HUD, to a State, or to a unit of general local government, if the applicant has received, or can reasonably expect to receive, an aggregate amount of all forms of such assistance in excess of $200,000 during the Federal fiscal year in which an application is submitted.

Section 112

A. Any person who makes or agrees to make an expenditure to influence the decision of any officer or employee of the Department, through communications with such officer or employee, with respect to: (1) The award of any financial assistance within the jurisdiction of the Department, or (2) any management action involving a change in the terms and conditions or status of financial assistance awarded to any person; and,

B. Any person who recieves payment or is retained for the purposes described in A. above.

Byrd Amendment

Any person who requests or receives a Federal contract, grant, loan, cooperative agreement or loan insurance or commitment from HUD and who makes a payment, or agrees to make a payment for influencing, or attempting to influence, an officer or employee of the United States, a Member of Congress, an officer or employee of Congress, and an employee of a Member of Congress in connection with a Federal contract, grant, loan, cooperative agreement or loan insurance or commitment from HUD.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files consist of applicant information and information regarding lobbyist/consultant activity. The documents may include reporting applicant/individual/entities' or lobbyists' name, addresses payments made, types of payments, compensation received, and services performed; officers, employees, or Members of Congress contacted; previous Government employment; type of assistance received and requested, names of project/activity participants; expected sources and uses of funds; Social Security Numbers (SSNs) or Employer Identification Numbers (EINs); Federal Action Numbers; payor/payee's names, addresses, dates of agreements, and estimated valuation of payments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 102 and 112 of the HUD Reform Act of 1989, 42 U.S.C. 3545 and 3537b; the Byrd Amendment (Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990, Pub. L. 101–121), 31 U.S.C. 1352; and the Housing and Community Development Act of 1987, 42 U.S.C. 3543.

PURPOSE(S):

The information collected under section 102 will enable HUD to provide public disclosure of documentation adequate to indicate how HUD and recipients of HUD assistance provided or denied the assistance to their applicants; e.g., other government assistance being requested, names and financial interest of all interested parties, and a report of expected sources and uses of funds.

The information collected under section 112 of the HUD Reform Act and the Byrd Amendment will identify those who make an expenditure for lobbying purposes and those lobbyists and consultants who may be engaged in influencing the outcome of decisions made by the Department. This information will improve HUD's ability to assure that the award of financial assistance is conducted in a manner that is fair and open, and free from improper influence.

The system will assist the Department in complying with legislative requirements, and will ensure greater accountability and integrity in HUD's grant and loan processes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Section 102 information will be made available for public inspection.

Section 112 information will be compiled in a report to be published in the **Federal Register**, shall constitute part of the public records of the Department, and shall be open to public inspection.

The Byrd Amendment information will be compiled in a report for submission to the Secretary of the Senate and the Clerk of the House of Representatives on a semi-annual basis. The report, including the compilation, shall be available for public inspection 30 days after the receipt of the report by the Secretary and the Clerk.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In file folders; in computers with limited access.

RETRIEVABILITY:

Name of reporting individual/entity, SSN, EIN, any project number or grant or loan number, name of person or entity in whose interest the registrant appears or works, federal action number, HUD program, and registration number.

SAFEGUARDS:

File folders and computers kept in a secured area; access restricted to authorized individuals.

RETENTION AND DISPOSAL:

Records collected pursuant to Section 112 of the HUD Reform Act of 1989 will be retained for two years in accordance with section 13, 42 U.S.C. 3537b. Records collected pursuant to section 102 will be retained for five years in accordance with 42 U.S.C. 3545 of the HUD Reform Act of 1989. For the Byrd Amendment, records will be destroyed in accordance with HUD Handbook 2225.6, Records Disposition Management: HUD Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Ethics, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer at the Headquarters location, in accordance with 24 CFR part 16. This location is given in appendix A

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned appear in 24 CFR part 16. If additional information or assistance is needed in relation to contesting the contents of records, it may be obtained by contacting the Privacy Act Officer at the Headquarters location. If additional information or assistance is needed in relation to appeals of initial denials, it may be obtained by contacting the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

[FR Doc. 91-9447 Filed 4-22-91; 8:45 am]

BILLING CODE 4210-01

DEPARTMENT OF THE INTERIOR

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1032-0004), Washington, DC 20503, telephone (202) 395-7340.

Title: Industrial Minerals Surveys.

OMB approval number: 1032-0038.

Abstract: Respondents supply the Bureau of Mines with domestic production and consumption data on nonfuel mineral commodities. This information is published in Bureau of Mines publications including the Mineral Industry Surveys, Volumes I, II, and III of the Minerals Yearbook, and Mineral Commodity Summaries for use by private organizations and other Government agencies.

Bureau form number: 6-1221-A et al. (39 forms).

Frequency: Monthly, Quarterly, Semiannual, Biennial, and Annual.

Description of respondents: Producers and Consumers of Industrial Minerals.

Annual responses: 15,660.

Annual burden hours: 10,740.

Bureau clearance officer: Alice J. Wissman, (202) 634-1125.

T.S. Ary,

Director, Bureau of Mines.

[FR Doc. 91-9418 Filed 4-22-91; 8:45 am]

BILLING CODE 4310-53-M

Bureau of Land Management

[NV-030-01-4333-11; Closure Notice NV-030-91-01]

Temporary Closures of Public Lands; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands during the official running of two competitive vehicle events. This action is being taken to provide for the public's safety and to protect adjacent resources. The following events are included in this notice:

May 11 and May 12, 1991—Western States Racing Association, Virginia City Grand Prix—Permit Number NV-03516-91-03.

May 26, 1991—Valley Off-Road Racing Association, Yearington 400 Off-Road Race—Permit Number NV-03516-91-04.

FOR FURTHER INFORMATION CONTACT: Fran Hull, Walker Area Recreation Planner, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706, Telephone: (702) 885-6000.

SUPPLEMENTARY INFORMATION: A map of each closure may be obtained from Fran Hull at the contact address. The event permittee is required to clearly mark and monitor the event route during the closure period. Specific information on each event is as follows:

1. Western States Racing Association Virginia City Grand Prix—Permit Number NV–03516–91–03. This event is located on roads and trails near Virginia City, Nevada, in Storey County within T17N R21E; T17N R22E; T16N R21E. The Bureau Lands to be closed to the public include existing roads and trails identified on the ground as the 1991 Virginia City Grand Prix and Bureau Lands within 500 feet of either side except at designated pit and spectator areas. This closure will be in effect from 7 a.m., May 11, 1991, until p.m., May 12, 1991.

2. Valley Off-Road Racing Association Yerington 400 Off-Road Race—Permit Number NV–03516–91–04. This event is located on roads and washes near Yerington, Nevada in Douglas and Lyon Counties, within T13N R24E; T14N R24E; T15N R24E; T16N R24E; T13N R25E; T16N R25E; T16N, R26E; and T17N R26E. Bureau Lands to be closed include existing roads and washes identified on the ground as the 1991 Yerington 400 Off-Road Race and Bureau Lands within 500 feet of either side except at designated pit and spectator areas. Spectators shall remain in safe locations as directed by event officials and BLM personnel. All vehicles not participating in the event shall maintain a maximum speed of 10 MPH within designated spectator and pit areas. These restrictions shall be in effect from 6 a.m. until midnight on May 26, 1991, during the official running of this event.

Dated: April 8, 1991.

James W. Elliott,

District Manager.

[FR Doc. 91–9420 Filed 4–22–91; 8:45 am]

BILLING CODE 4310–HC–M

[NV–930–91–4211–11; N–54045

Realty Action; Application for a Right-of-way for a 24" Natural Gas Pipeline (19.2 Miles Long by 50 Feet Wide); Nevada

Southwest Gas Corporation has applied under section 28 of the Mineral Leasing Act of 1920, 30 U.S.C. 185, 43 CFR 2880; to obtain a right-of-way for a 24" natural gas pipeline across the following land:

Mount Diablo Meridian Nevada

T. 23 S., R. 63 E.,
  Sec. 31: SE¼SE¼.
T. 24 S., R. 63 E.,
  Sec. 6: Lot 9, SW¼NE¼, SE¼.
  Sec. 7: E½
  Sec. 18: E½E½.
  Sec. 19: E½E½.
  Sec. 29: SW¼SW¼.
  Sec. 30: E½E½.
  Sec. 32: W½W½.
T. 25 S., R. 63 E.,
  Sec. 5: Lot 8, SW¼NW¼, W½SW¼.
  Sec. 8: W½W½.
  Sec. 17: W½NW¼, SW¼.
  Sec. 20: E½NW¼, E½SW¼.
  Sec. 29: E½W½.
  Sec. 32: E½W½, SW¼SE¼.
T. 26 S., R. 63 E.,
  Sec. 5: Lots 6–7, S½N½, W½SE¼.
  Sec. 8: W½E½.
  Sec. 17: W½E½
  Sec. 20: W½NE¼; NW¼SE¼, S½SE¼.
  Sec. 28: SW¼NW¼, NW¼SW¼, S½SW¼.
  Sec. 29: E½NE¼.
  Sec. 33: E½NW¼, SW¼NE¼, N½SE¼, SE¼SE¼.
T. 27 S., R. 63 E.,
  Sec. 3: Lot 8, SW¼NW¼.
  Sec. 4: Lot 5.

Containing approximately 116.364 acres.

FOR FURTHER INFORMATION CONTACT: Carolyn Spoon, Las Vegas District Office, 4765 W. Vegas Dr., P.O. Box 26569, Las Vegas Nevada 89126, 702–647–5000, for more information concerning this application.

Dated: April 11, 1991.

Gary Ryan,

Acting District Manager, Las Vegas, NV.

[FR Doc. 91–9453 Filed 4–22–91; 8:45 am]

BILLING CODE 4310–HC–M

National Park Service

TW Recreational Services, Inc.; Concession Contract Negotiations

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with TW Recreational Services, Inc. authorizing it to continue to provide lodging, food and beverage, transportation, marina, merchandising and other visitor facilities and services for the public at Yellowstone National Park in Wyoming for a period of ten (10) years from November 1, 1991 through October 31, 2001.

EFFECTIVE DATE: July 23, 1991.

ADDRESS: Interested parties should contact the Regional Director, Rocky Mountain Region, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: The proposed contract requires a construction and improvement program. The construction and improvement program required has been addressed in the National Environmental Policy Act document FES 74–31 dated June 11, 1974, Final Environmental Statement, that was prepared in conjunction with the Yellowstone Master Plan. The proposed contract also requires participation in a Capital Improvement and Maintenance Program. This Program requires the operator to expend a specified percentage of gross receipts to upgrade and maintain government facilities assigned for the operator's use. The construction and improvement program required was previously addressed in Environmental Review of Assessment of Alternatives that have been prepared in conjunction with the Development Concept Plans for the Lake, Grant Village, and Old Faithful areas.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on October 31, 1991, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. Sec. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be submitted to the Regional Director, Rocky Mountain Region, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225 on or before the ninetieth (90th) day following publication of this notice to be considered and evaluated.

Dated: February 27, 1991.

Jack W. Neckels,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 91–9481 Filed 4–22–91; 8:45 am]

BILLING CODE 4310–70–M

U.S. World Heritage Nomination 1991

AGENCY: National Park Service, Department of the Interior.

ACTION: Public Notice.

SUMMARY: The Department of the Interior, through the National Park Service, announces the nomination of Taliesin and Taliesin West to the World Heritage List. The nomination is the result of Interior's annual World Heritage nomination process, which was initiated through a March 20, 1990 **Federal Register** notice (55 FR 10327). The Department earlier announced the identification of the site as a proposed U.S. World Heritage nomination (55 FR

32705). The nomination was submitted, to the Secretariat of the World Heritage Committee, for consideration through a process that could lead to its inscription on the World Heritage List in December 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Milne, Chief, Office of International Affairs, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127, (202) 343–7063.

SUPPLEMENTARY INFORMATION: The Convention Concerning the Protection of the World Cultural and Natural Heritage, ratified by the United States and 114 other countries, has established a system of international cooperation through which cultural and natural properties of outstanding universal value to mankind may be recognized and protected. The Convention seeks to put into place an orderly approach for coordinated and consistent heritage resource protection and enhancement throughout the world. Participating nations identify and nominate their sites for inclusion on the World Heritage List, which currently includes 322 cultural and natural properties. The World Heritage Committee evaluates all nominations against established criteria.

In the United States, the Department of the Interior is responsible for directing and coordinating U.S. participation in the World Heritage Convention. The Department implements its responsibilities under the Convention in accordance with the statutory mandate contained in Title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96–515; 16 U.S.C. 470a–1, a–2). On May 27, 1982, the Interior Department published in the **Federal Register** the final rules which are used to carry out this legislative mandate (47 FR 23392). The rules contain further information on the Convention and its implementation in the United States.

U.S. World Heritage Nomination: 1991

The Interior Department, in cooperation with the Federal Interagency Panel for World Heritage, selected the following property as a U.S. nomination to the World Heritage Committee for inscription on the World Heritage List.

I. Cultural Property

Wisconsin

Architecture: Wright School.

Taliesin, Wisconsin (43 10'N; 90 10'W). The great center of Wright's activity, this combination of home, workshop, laboratory, and retreat consists of several groupings of structures designed individually to suit their different uses. This architectural ensemble, especially valuable to the study of Wright's work, is summer home and studio of Taliesin Fellowship, the architectural school founded by him. Criteria: (i) represents a unique artistic achievement, a masterpiece of the creative genius; and (ii) has exerted a great influence over a span of time, and within a cultural area of the world, on developments in architecture.

Arizona

Architecture: Wright School.

Taliesin West, Arizona (33 50'N.11 90'W). This desert complex, the winter quarters of the Taliesin Fellowship, operated as the complement to Taliesin in Wisconsin, during the last 20-odd years of Wright's life. Together with Taliesin, Wisconsin, this property expresses Wright's educational theories and vision of society, as well as his mature architectural concepts.

Criteria: (i) represents a unique artistic achievement, a masterpiece of the creative genius; and (ii) has exerted great influence over a span of time and within a cultural area of the World on developments in architecture.

Dated: April 3, 1991.

Scott Sewell,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 91–9458 Filed 4–22–91; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–290 (Sub. No. 89X)]

Norfolk and Western Railway Co.—Discontinuance Exemption—In McDowell County, WV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the discontinuance of operations by Norfolk and Western Railway Company over 10.7 miles of rail line in McDowell County, WV, extending between milepost T–12.3, at Black Wolf, through Anawalt (milepost T–18.5/NT–17.3), and milepost NT–21.8, at Jenkinjones, WV, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 23, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by May 3, 1991, petitions to stay must be filed by May 8, 1991, and petitions for reconsideration must be filed by May 20, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB–290 (Sub-No. 89X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
and
(2) Petitioner's representative: Richard W. Kienle, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 298–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: April 15, 1991

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Kathleen M. King,

Acting Secretary.

[FR Doc. 91–9356 Filed 4–22–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: May 8, 1991, 9:30 am–12 noon, pm. S–2217, FPBldg. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. section 552(c)(1). The Committee will hear and discuss sensitive and confidential matters

[1] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Director, Trade Advisory Group, Phone: (202) 523-2752.

Shellyn G. McCaffrey,

Deputy Under Secretary, International Affairs.

[FR Doc. 91-9491 Filed 4-22-91; 8:45 am]

BILLING CODE 4510-28-M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

National Commission on Acquired Immune Deficiency Syndrome; Meeting

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Commission on Acquired Immune Deficiency Syndrome announces forthcoming meetings of the Commission.

DATES AND TIME: Thursday, May 16, 1991—9 a.m. to 5:30 p.m.; Friday, May 17, 1991—9 a.m. to 5:30 p.m.

PLACE: San Francisco Hilton on Hilton Square, 333 O'Farrell Street, San Francisco, California 94102, 415-771-1400.

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street NW., suite 815, Washington, DC 20006, (202) 254-5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address .

AGENDA: The Commission will discuss issues surrounding the HIV epidemic in the lesbian, gay and bisexual communities, and HIV issues among Asian-Americans, Asians, and Pacific Islanders.

Interpreting services are available for deaf people. Please call our TDD number, (202) 254-3816, to request services no later than May 9, 1991.

Dated: April 18, 1991.

Maureen Byrnes,

Executive Director.

[FR Doc. 91-9504 Filed 4-22-91; 8:45 am]

BILLING CODE 6820-CN-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel; Informal Science Education

The National Science Foundation announces the following meeting:

Name: Informal Science Foundation Panel Meeting.

Date and Time: May 8, 1991, from 8:15 a.m. to 6 p.m., and on May 9 and 10, from 8:30 a.m. to 5 p.m.

Place: The River Inn, room 105, 924 25th Street, NW., Washington, DC 20037.

Type of Meeting:

Contact Person: Barbara Butler, Hyman Field, and Robert Russell, Program Directors, Informal Science Education, National Science Foundation, 1800 G St., NW., room 635-A, Washington, DC 20550, Phone (202) 357-7078.

Purpose of Meeting: To provide advice and recommendations concerning Informal Science Education proposals.

Agenda: To review and evaluate Informal Science Education proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propriety or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552 b (c), Government in the Sunshine Act.

Dated: April 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-9459 Filed 4-22-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Application for License to Export a Utilization Facility

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the application for a license to export a utilization facility as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility to be exported. The information concerning this application follows:

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of appl., date received, application no.	Description	Value	End use	Country of destination
General Atomics, 03/22/91, 03/25/91, XR158.	TRIGA Mark II, Research Reactor	$3,500,000	Advanced neutron and gamma radiation studies, isotope production, sample activation, and student training..	Morocco.

Dated this 16th day of April 1991 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Betty L. Wright,

Acting Assistant Director for Exports, Security, and Safety Cooperation International Programs, Office of Governmental and Public Affairs.

[FR Doc. 91-9478 Filed 4-22-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-302]

Florida Power Corp.; Withdrawal of Portion of Amendment Application to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has

granted a request by Florida Power Corporation (the licensee) to withdraw a portion of its October 31, 1989 application for an amendment to Facility Operating License No. DRP–72, issued to the licensee for operation of the Crystal River Unit 3 Nuclear Generating Plant, located in Citrus County, Florida. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on March 12, 1990 (55 FR 9230).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to increase the capacity of spent fuel storage pool B and increase the allowable enrichment in fuel pool B.

Subsequently the licensee informed the staff that the portion of the amendment application which requested a one-time relief to allow removal of the missile shields over spent fuel pool B while modifying the pool racks is no longer required. Thus, this portion of the amendment application is considered to be withdrawn by the licensee.

For further details with respect to this action, see (1) The application for amendment dated October 31, 1989, as supplemented January 25, March 8, June 21, August 23, November 8, and November 28, 1990, and (2) Amendment No. 134 dated April 16, 1991.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

Dated at Rockville, Maryland, this 16th day of April 1991.

For the Nuclear Regulatory Commission.

Harley Silver,

Project Manager, Project Directorate II–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–9477 Filed 4–22–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

The Computer Matching and Privacy Protection Amendments of 1990 and The Privacy Act of 1974

AGENCY: Office of Management and Budget (OMB).

ACTION: Proposed guidance.

SUMMARY: OMB request public comments on proposed guidance to Federal, State and local agencies on implementing certain provisions of the Privacy Act of 1974, as amended. This guidance focuses especially on the recently enacted Computer Matching and Privacy Protection Amendments of 1990, which alter the due process provisions of the Computer Matching and Privacy Protection Act of 1988. This latter Act amended the Privacy Act of 1974. The guidance also addresses another issue suggested by agencies in reporting to OMB their activities in implementing the Computer Matching and Privacy Protection Act.

DATE: Comments should be submitted no later than May 23, 1991.

ADDRESS: Send written comments to the Information Policy Branch (Attention Robert N. Veeder), Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503. Comments may be sent by Fax to Robert N. Veeder at 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Veeder, Information Policy Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (202) 395–3785.

SUPPLEMENTARY INFORMATION: Section (v) of the Privacy Act of 1974 (5 U.S.C. 552a) charges OMB with overseeing agencies' implementing activities and issuing regulations and guidelines. In addition, Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988 (CMPPA), and Public Law 101–508, the Computer Matching and Privacy Protection Amendments of 1990 (amendments) require OMB to provide guidance on their implementation. Where the proposed guidance below contradicts earlier guidance on specific points of interpretation, it is intended that the most recent guidance should be relied upon.

The changes made by the Computer Matching and Privacy Protection Amendments of 1990 addressed agencies' problems in implementing the due process provisions of the Computer Matching and Privacy Protection Act of 1988. (See 5 U.S.C. 552a(p), "Verification and Opportunity to Contest Findings".) Under the 1988 provisions, before taking an adverse action, an agency was required to verify independently any information developed through a matching program that indicated ineligibility. The agency was also required to notify the individual of any proposed action and wait thirty days for the individual to respond. These provisions were intended to ensure fairness in the determination process.

As implementation took place, it became apparent that the due process provisions in some instances conflicted with existing protections that had arguably been working well prior to the Computer Matching and Privacy Protection Act. This was especially true in programs such as Food Stamps, Aid to Families with Dependent Children, and Medicaid, all of which had well-established due process traditions provided by statute, regulation, or both.

The consequence of providing individuals with 30 days to respond to a notice of adverse finding was to automatically overpay some beneficiaries.

As to independent verification, the House Report on the amendment noted that "The purpose of the independent verification requirement is to assure that the rights of individuals are not affected automatically by computers without human involvement and without taking reasonable steps to determine that the information relied upon is accurate, complete and timely." (House Report 101–768, p. 4) Again, the goal was to assure fairness to the individual.

Indeed, as they implemented the Computer Matching and Privacy Protection Act, agencies discovered instances where strict adherence to the independent verification requirement could have serious financial and administrative implications for the management of their programs. For example, in the case of data exchanges between State agencies and the Social Security Administration (SSA) under the Income Eligibility and Verification System (IEVS), the States have no independent procedure through which they can verify the SSA data. IEVS recognizes this problem by excluding Social Security and Supplemental Security Income (SSI) data from its own independent verification requirement. Similarly, automated data exchanges between the Department of Defense and the Department of Veteran's Affairs to determine eligibility for certain educational benefit programs would be jeopardized if, in each instance, before taking an action, the recipient agency had to examine the source agency's underlying paper record.

The Computer Matching and Privacy Protection Amendments of 1990 change both the independent verification and 30-day notice due process protection provisions. These changes are described below, accompanied by proposed guidance.

1. *Notification of Adverse Finding:* The 1990 amendments authorize agencies that have in law or regulation a different time period for notification than thirty days, to substitute that other period. Agencies without alternative periods must wait thirty days.

The amendment allowing agencies to substitute existing alternative time periods were effective immediately upon enactment and did not require specific OMB interpretive guidance. OMB invites comment therefore, on related guidance on this provision:

• Under what circumstances should an agency be permitted to establish a new time period by regulation? OMB interprets the amendments to indicate that agencies should be able to adopt new time periods that are shorter than the 30 day threshold the CMPPA provides. What safeguards are needed for this process?

• Should OMB provide guidance on what constitutes "reasonable notice," including defining when the time period begins to run? What should that guidance say?

• Should OMB mandate what the content of the notices should be? If so, how specific should the content be?

Reviewers should use the following proposed guidance as a point of departure for commenting on the questions above.

Proposed Guidance: "Where a program statute is silent or permits, agencies may also establish a new notification period through rulemaking that involves the public in the process, either through hearings or publication in the **Federal Register** for notice-and-comment. Agencies should not establish periods that are shorter than the CMPPA's thirty day standard unless they can ensure that such periods are adequate to give individuals meaningful notice and sufficient time to respond.

Moreover, whatever the time period used, agencies must disclose not merely the fact that they have information that indicates ineligibility, but what that information is. This will give individuals meaningful notice and permit them to understand exactly what the discrepant information is and to provide any explanatory information. In either case, the period begins to run from the date of the notice that describes the agency's findings to the individual or the date on which the agency provides a copy in person."

2. *Independent Verification Requirements:* The 1990 amendments authorize an agency's Data Integrity Board to waive the independent verification procedures when it finds a high degree of confidence in the accuracy of the data.

The amendments create an alternative to the requirement that agencies independently verify the accuracy of information developed through a matching program before using it to make an adverse determination. According to the House Report, "the alternative procedure permits a Data Integrity Board to waive the independent verification procedure * * * for qualifying disclosures." (House Report 101–768, p. 4.)

Note that this alternative is not a general exception to the requirement; it is available only for a specific type of matching data and only when the agency has taken certain steps.

Reviewers are invited to comment on the following proposed guidance. OMB is particularly interested in knowing whether its guidance for identifying the types of matching data eligible for a waiver is adequate. Also, are the criteria for evaluating a database sufficient?

Proposed Guidance: "Program officials may petition the Data Integrity Board of the recipient Federal agency in the case of a Federal matching program, or the Federal source agency in the case of a Federal/State matching program to waive the independent verification requirement only after they have taken the following steps:

• Identification of the Type of Matching Data Eligible for the Waiver. Eligible data are only information that identifies the individual and the amount of benefits paid to the individual under a Federal benefit program. A clear example of the kind of data exchange that is eligible for waiver consideration is the furnishing to States by the Social Security Administration of Cost of Living Adjustment (COLA) information that consists of the name of the benefit recipient, the benefit amount including amount of the COLA change, and other information. In this example, the name and benefit amount would be eligible for the waiver procedure; the "other information" would not. Another example would be the furnishing by the Department of Defense of information about the Reserve status of military personnel to the Department of Veterans Affairs for purposes of determining credit for educational benefits programs, provided that the information consisted of the name, rank and reserve status, i.e., active or inactive during the reporting time period. In both of these examples, the data that is conveyed is unambiguous: *E.g.*, the COLA increase is five percent for all recipients; here is a list of all reservists who performed duty such that they are eligible for the benefit. Where the information furnished is less precise (*E.g.*, it consists of underlying eligibility information—amount of earned income, amount of unearned income, number of dependents) and is different for each participant, such data is not a candidate for the waiver procedure.

• Conducting Thorough Determinations of Data Accuracy. Once an agency has determined that the data being exchanged qualifies for the waiver procedure, the agency must present convincing evidence to the Data Integrity Board of the recipient agency (or source agency in the case of a Federal/non-Federal Match) to permit the Board to assert a high degree of confidence in the accuracy of the data. Note that the Amendments do not require that the agencies conduct thorough audits of their systems, only that they have information relating to the quality of data. Among the elements an agency may wish to present to a Data Integrity Board are the following, (not all of which may be necessary or appropriate):

—A description of the data bases involved (both source and recipient) including information on how data are acquired and maintained so as to permit accuracy assessments.

—The system managers' overall assessment of the reliability of the systems and the accuracy of the daa they contain (both participants).

—The results of any audits or risk assessments conducted (both participants).

—Any material or significant weaknesses identified in response to requirements of the Federal Managers Financial Integrity Act or related legislation and any applicable OMB Circulars (both participants).

—Any assessments of the effectiveness of the agencies' Personnel Security Programs (both participants).

—The security controls in place for the systems and the security risks associated with those systems (both participants).

—Any historical data relating to program error rates (recipient agency).

—Any information relating to the currency of the data (source agency). For example, a source agency updates data each quarter. A recipient agency should probably not use data that it received in January to make a determination in March since newer data will be available then. In some cases, the source agency may wish to provide confidence intervals to help the recipient agency determine when the data is so old as to be suspect: e.g., data is 99 percent accurate within one week of receipt, 95 percent accurate within two weeks of receipt, 85 percent accurate within three weeks of receipt. Alternatively, a source agency may wish to warn a recipient agency not to use data after the date on which the data base is updated.

Note that this list is not meant to be exhaustive, nor will each item be suitable for every matching program. Agencies should use whatever is appropriate to their particular circumstances, so long as the resultant finding is that the Data Integrity Board has a high degree of confidence in the accuracy of the data. Obviously, since much of the data used by the recipient agency in the determination must come from the source, the source should be prepared to cooperate in the development of the waiver determination. The evaluations should be renewed each time the matching agreement is renewed. Moreover, any changes to the data base that would affect data quality should be reported to the Data Integrity Board which must then determine whether to continue its certification.

Once the Data Integrity Board has found a matching program eligible for waiver, it should notify the program officials expeditiously. It should also notify the source agency. The board should be prepared to include information about any waivers granted as part of its Matching Report to OMB and its agency head."

Supplemental Guidance on the Responsibilities of the "Source" and "Recipient" Agencies (5 U.S.C. 552a(a)). Finally, OMB seeks comment concerning whether it should amend guidance previously given concerning the responsibility of the "source" and "recipient" agencies.

OMB's initial guidance made the recipient Federal agency responsible for meeting the reporting and publishing requirements of the Computer Matching and Privacy Protection Act. This assignment was based on the assumption that the recipient agency was the one most likely to benefit from the matching program and should, therefore, bear the costs. OMB now believes, however, that in certain limited circumstances, the assumption is not valid. In some cases, a single agency may perform matches for a group of other agencies. The recipient agency in such cases derives no benefit of its own, nor does it have the information needed to produce the reports and notices the Computer Matching and Privacy Protection Act requires. It merely matches records and gives to the source agencies information, (e.g., location of a Federal employee who has defaulted on an obligation incurred under a program operated by the source agency) on which they may base some action. In cases like these, OMB intends that its assignment of responsibilities to the recipient agency be interpreted in an equitable way. While it still may make sense from an efficiency standpoint to make one agency responsible for all of the required administrative actions, the matching parties should assign responsibility in a fair and reasonable way.

OMB invites comment on how to clarify the administrative responsibilities of these parties in a fair and equitable manner.

James B. MacRae, Jr.,

Acting Administrator and Deputy Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 91-9475 Filed 4-22-91; 8:45 am]

BILLING CODE 3110-01

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology; Meeting

The President's Council of Advisors on Science and Technology (PCAST) will meet on May 2-3, 1991. The meeting will begin at 9 a.m. in the Conference Room, Council on Environmental Quality, 722 Jackson Place NW., Washington, DC.

The purpose of the Council is to advise the President on matters involving science and technology.

Proposed Agenda

1. Briefing of the Council on the current activities of the Office of Science and Technology Policy and of the private sector.
2. Briefing of the Council on current Federal activities and policies in science and technology.
3. Discussion of progress of working group panels.
4. Discussion of composition of future working groups.

Portions of the May 2-3 sessions will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of materials that are formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to *5 U.S.C. 552b(c) (1), (2), and (9)(B).*

A portion of the discussion of panel composition will necessitate discussion of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to *5 U.S.C. 552b(c)(6).*

Because of the security requirements, persons wishing to attend the open portion of the meeting should contact Ms. Ann Barnett, (202) 395-5101, prior to 3 p.m. on May 1, 1991. Ms. Barnett is also available to provide specific information regarding time, place and agenda.

Dated: April 17, 1991.

Damar W. Hawkins,

Executive Assistant, Office of Science and Technology Policy.

[FR Doc. 91-9489 Filed 4-22-91; 8:45 am]

BILLING CODE 3170-01-OSTP-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29087; File No. SR-Amex-90-24]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Exchange Procedures Governing Administration of Securities Industry Arbitration

I. Introduction

On November 7, 1990, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b-4 thereunder,[2] a proposed rule change designed to amend certain of the Amex's current arbitration rules and procedures.[3] According to the Exchange, the proposed amendments are designed to codify modifications to the Uniform Code of Arbitration which were approved by the Securities Industry Conference on Arbitration ("SICA").

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

[3] On March 25, 1991, the Amex submitted Amendment No. 1 to File No. SR-Amex-90-24 (see letter from Janice M. Stroughter, Senior Counsel and Director of Hearings, Legal and Regulatory Policy Division, Amex, to Laurie Petrell, Division of Market Regulation, SEC, dated March 21, 1991). Amendment No. 1 contains nonsubstantive, technical changes. Subsequently, on April 12, 1991, the Amex submitted Amendment No. 2 to the original rule filing (see letter from Janice M. Stroughter, Amex, to Laurie Petrell, SEC, dated April 5, 1991). Amendment No. 2 contains non-substantive clarifications to the portion of the proposed rule change relating to member small claims procedures.

The proposed rule change was noticed in Securities Exchange Act Release No. 28664 (November 30, 1990), 55 FR 50426 (December 6, 1990). No comments were received on the proposal.

II. Description of the Proposal

1. Rule 606: Initiation of Proceedings

The proposed amendments to rule 606(d)(1) set forth the standard for permissive joinder of claimants or respondents. Proposed Rule 606 provides that all persons may join in one action as claimants (or may be joined in one action as respondents) if they assert any right to relief (or any right to relief is asserted against them) jointly, severally, or arising out of the same transaction, occurrence or series of transactions or occurrences and if any questions of law or fact common to these claimants (respondents) will arise in the action. Proposed rule 606(d)(3) clarifies that the Director of Arbitration is authorized to determine preliminarily whether claims filed separately are related and to consolidate such claims. In addition, proposed rule 606(d)(4) allows, but does not require, the arbitration panel to make any further determinations with respect to joinder, consolidation, and multiple parties and states that such determinations shall be final.

2. Rule 607: Pre-hearing Conference

Proposed rule 607(d)(2) requires that any issues raised at the pre-hearing conference that are unresolved be referred by the Director of Arbitration to a single public member of the arbitration panel for decision. Rule 607(e) currently provides, however, that in matters involving public customers, such single arbitrator may be either public or industry if the public customer has requested a panel consisting of a majority of arbitrators from the securities industry. Further, the amendment to rule 607(e) supplements current rule 607(e) by allowing the Selected Arbitrator to be a securities industry arbitrator if the public customer demands, in writing, a securities arbitrator.

3. Rule 608: Rules of General Application

Pursuant to proposed rule 608(e), the fee for hearing adjournments will be increased. Currently, the party requesting an adjournment, subsequent to the appointment of arbitrators, must pay a fee equal to the deposit of costs but not more than $100. Proposed Rule 608(e) requires the party requesting an adjournment after arbitrators have been appointed to deposit a fee, equal to the initial deposit of hearing session fees for the first adjournment and twice the initial deposit of hearing session fees, not to exceed $1,000, for a second or subsequent adjournment requested by the same party. Further, upon receiving a third request for an adjournment consented to by all parties, the arbitrators may dismiss the arbitration without prejudice to the claimant. The Exchange believes that proposed Rule 608(e) will discourage adjournments of scheduled hearings.

4. Rule 616: Amendments

Proposed Rule 616(a) changes the procedure for serving upon the respective parties any amendments to the original pleadings. Under the current practice, pleading amendments are filed directly with the Director of Arbitration who then is required to serve upon all other parties a copy of the amendment. Within ten (10) business days thereafter, the other parties may file a response to the amendment with the Director of Arbitration. The proposal would require that the parties file the amendment and subsequent responses with the Director of Arbitration while also directly serving such documents upon the other parties. The parties also must provide the Director with sufficient additional copies for each arbitrator. The proposal, therefore, eliminates the need for the Director of Arbitration to serve such documents directly upon the respective parties, thereby saving the Amex time and money.

5. Rule 618: Awards

According to the Exchange, the form and content of the written arbitration award has been a focal point of discussion for some time. Currently, an award must, in partinent part, identify the parties and contain a summary of the issues involved. The proposed amendment to rule 618(e) will require that the written award identify the security or product involved in the dispute. The Exchange believes that including such information should give the public a better understanding of the award. In addition, the award will identify the parties' counsel, if any.

Proposed rule 618(g) enables the arbitrators to award interest as they deem appropriate, and requires that all awards shall bear interest from the date of the award until payment at the legal rate, if any, then prevailing in the state where the award is rendered, or at a rate set by the arbitrator(s) in the award. Finally, proposed rule 618(h) states that all monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. The Exchange believes that these proposals will encourage prompt payment of awards and will increase confidence in the arbitration process.

6. Rule 619: Agreement to Arbitrate

Proposed Rule 619 expressly states that Article VIII of the Amex Constitution and the provisions of Amex rules 600–rules 623 shall be deemed a part of the incorporated by reference in every agreement to arbitrate under the Constitution of Rules of the Amex.

7. Rule 620: Schedule of Fees; Rule 621: Simplified Arbitration

The Exchange proposes to amend Rule 620 in order to increase the total fees paid by claimants, and to increase the amounts which may be retained by the Exchange when a case is settled or withdrawn prior to a hearing. Currently, the Exchange may retain $100 when a case is resolved other than by a hearing (*i.e.*, through settlement or withdrawal of the claim), regardless of the amount of the claim or the number of claims or parties involved. According to the Exchange, $100 does not begin to reflect the Exchange's actual administrative costs and costs of selecting and paying the arbitration panel. The amendment to rule 620(a), therefore, will require parties, at the time of filing a claim, counterclaim, third-party claim or cross-claim, to pay a nonrefundable filing fee in addition to the deposit of a hearing session fee.[4] Rule 620(a) will permit the Exchange to retain the filing fee for all cases and Rule 620(f) will alow the Exchange to retain the hearing deposit when a case is resolved in any manner other than by a hearing within eight business days of the first scheduled hearing session other than by a pre-hearing conference.

Proposed Rule 620(c) also permits the arbitrators to determine the amount chargeable to the parties as forum fees and who shall pay such fees. Further, the arbitrators may determine in the award that a party shall reimburse to another party any non-refundable filing fee or hearing session deposit. In addition, the Exchange is proposing to amend Rule 620(h) in order to eliminate

[4]Proposed rule 620(i) contains schedules of filing fees and hearing session deposits for customer and industry claimants. The customer claimant filing fee schedule ranges from a fee of $15 for claims under $1,000 to a fee of $300 for claims over $5 million. The hearing session deposit fee for customer claimants ranges from $15 to $75 for simplified arbitration cases (*i.e.*, claims $10,000 or less), and ranges from $15 for claims under $1,000 to $1,500 for claims over $5 million. For industry claimants, the filing fee is $500 for all claims, and the hearing session deposit fee is $300 for all pre-hearing conferences and simplified arbitration claims (*i.e.* one-arbitrator hearings), and ranges from $600 to $1,500 for claims that require a panel of three arbitrators.

uncertainty regarding the fees for pre-hearing conferences. Currently, rule 620(h) provides the rate of calculation for pre-hearing conference fees but does not specify on which figures the calculation is to be based. Proposed rule 620(h) will set forth a table of fees for such conferences, based on the amount of the claim.

Finally, proposed Rule 621(a) specifies the procedures to be used for all simplified arbitration (*i.e.*, where the dollar amount of the claim is $10,000 or less). Further, proposed Rule 621 (c) and (d) refers the claimant of a simplified arbitration to the schedule of fees in proposed Rule 620 in order to determine the applicable filing fee and hearing session deposit.

8. Rule 622: Schedule for Member Controversies; Rule 623: Member Small Claims Procedure

In order to conform the Exchange's schedule of fees to those of other self-regulatory organizations ("SROs"), proposed new rule 622 sets forth a separate filing fee schedule for member/member controversies.[5] Proposed Rule 622 also provides a schedule of fees for pre-hearing conferences with an arbitrator in member/member controversies. The Exchange hopes that these proposed rules, coupled with proposed Rule 620 noted above, will eliminate ambiguity regarding classifications of disputes by setting forth three distinct categories: Customer claimants, industry claimants against non-members and member claimants against members (*i.e.*, member/member controversies).

III. Discussion and Conclusion

The Commission was instrumental in promoting the formation of SICA in 1977 and, since that time, has maintained a strong and continual interest in the arbitration rules and procedures in place at the various SROs, including the Amex. The Commission has been supportive of SICA's most recent proposals to amend the Uniform Code of Arbitration, and has encouraged SROs to adopt these amendments into their rules. In fact, the Amex's proposal herein is substantially similar to New York Stock Exchange, Inc. ("NYSE"), National Association of Securities Dealers, Inc. ("NASD") and Pacific Stock Exchange, Inc. ("PSE") proposals to amend their arbitration rules and procedures which recently were approved by the Commission.[6]

The Commission has reviewed carefully the Exchange's proposed rule change, and finds, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, the requirements of section 6.[7] The Commission finds that the proposed rule change should improve the speed and efficiency of arbitration, while at the same time maintaining the traditional qualities of arbitration.

More specifically, the Commission finds that the proposed amendments to rule 606, which set forth the elements required for the joinder and consolidation of actions and parties, establish sufficiently clear standards for the Director of Arbitration to determine preliminarily, and for the arbitration panel to make a final determination, regarding whether related claims should proceed in the same or separate proceeding.

The Commission also finds that the proposed amendments to Rule 607, which require that a public arbitrator be appointed to decide any issues that are not resolved at the pre-hearing conference and that the Selected Arbitrator in any claim involving a public customer be a public arbitrator (unless the public customer has chosen a panel consisting of a majority of securities arbitrators or if such customer demands, in writing, a securities arbitrator), should increase customer confidence with regard to the fairness of the administration of the arbitration process for cases involving small claims.

Moreover, the Commission agrees with the Exchange that the proposed amendments to Rule 608 should reduce the number of adjournments requested by the parties. In particular, the Commission believes that the amendment to rule 608(e) which grants the arbitrators express authority to dismiss cases without prejudice after repeated adjournments, should operate to discourage adjournments and should thus result in a more efficient allocation of the Exchange's arbitration resources and a more timely resolution of parties' disputes. The Commission further believes that the amendment to rule 606(e) that increase the fee for adjournments provides for an equitable method for the retention of reasonable fees to recover the costs associated with the empanelment of the arbitrators following repeated adjournments, as well as a means to defray the arbitrators' compensation.

The Commission also believes that proposed Rule 616 should improve the efficiency of the Exchange's arbitration procedures. By eliminating the current requirement for the Director of Arbitration to serve all pleading amendments upon the respective parties, the Exchange should save a considerable amount of time and money which can, in turn, be devoted to other aspects of the arbitration process.

The Commission agrees with the Exchange that the amendment to Rule 618 should encourage the prompt payment of awards and increase confidence in the arbitration process. The Commission believes that it is appropriate to amend Rule 618 to provide arbitrators with the express authority to award interest and with the discretion to determine the rate of interest in order to more fully compensate parties for economic damages incurred by claimants. Similarly, the Commission believes that the portion of the amendment to rule 618 that provides for interest from the date of the award and the additional requirement that awards be paid within thirty (30) days of receipt should likewise ensure that awards are promptly paid. The Commission also agrees that requiring more information in the written award should provide the public with a more complete understanding of the award.

Furthermore, the Commission believes that the amendment to rule 619, which incorporates by reference Article VIII of the Amex Constitution and the Amex's Arbitration Rules into every agreement to arbitrate pursuant to the Constitution and Rules of the Exchange, should operate to prevent the frustration of the provisions of its arbitration rules by the party's refusal to sign a submission agreement. The Commission believes the amendment to rule 619 should raise customer confidence in the arbitration process by ensuring that the safeguards provided by the Amex's arbitration rules will be incorporated by reference into every agreement to arbitrate.

Finally, the Commission believes that the general restructuring of the Exchange's fee provisions and the proposed fee increases provide for the equitable allocation of reasonable fees among Exchange members and other persons using its facilities. As stated above, the proposed amendment to rule 620 requires filing fees in addition to the hearing session deposits, provides a schedule of fees for a pre-hearing

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[5] Existing rule 622, Member Small Claims Procedure, was renumbered rule 623.

[6] See Securities Exchange Act Release No. 28421 (September 10, 1990), 55 FR 38181 (order approving File No. SR-NYSE-90-19); Securities Exchange Act Release No. 28086 (June 1, 1990), 55 FR 23493 (order approving File No. SR-NASD-90-03); and Securities Exchange Act Release No. 28783 (January 15, 1991) (order granting accelerated approval to File No. SR-PSE-90-31).

[7] 15 U.S.C. 78f (1988).

conference with an arbitrator, and permits the Exchange to retain the filing fee even when a case is resolved in any manner other than by a hearing. The Commission believes that rule 620's explicit fee structure should promote certainty regarding the fees for pre-hearing conferences through its published fees. Likewise, the Commission believes that the proposed amendment to rule 622, which requires parties to member controversies to pay a filing fee and provides a schedule of fees for a pre-hearing conference with an arbitrator, provides for an equitable schedule of fee assessments against Exchange members. In summary, the Commission believes that the amendments to rule 620 and 622 reasonably apportion fees among the users of the Exchange's arbitration forum in proportion to the costs associated with the respective parties.

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that, because these rules will aid in the just resolution of disputes between investors and broker-dealers, the proposed rule change is consistent with section 6(b)(5) of the Act,[8] which requires that national securities exchanges have rules designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, further investor protection and the public interest in the fair administration of arbitration proceedings conducted pursuant to such rules. In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] in that it provides for the equitable allocation of reasonable fees among Exchange members and other persons using its facilities.

It Is therefore ordered, Pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Dated: April 15, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-9413 Filed 4-22-91; 8:45 am]

BILLING CODE 8010-01-M

[8] 15 U.S.C. 78f(b)(5) (1988).

[9] 15 U.S.C. 78f(b)(4) (1988).

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30-3(a)(12) (1990).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Areas #2494 & #2495]

Florida (And Contiguous Counties in Georgia); Declaration of Disaster Loan Area

Leon and Wakulla Counties and the contiguous counties of Franklin, Gadsden, Jefferson, and Liberty in the State of Florida and Grady and Thomas Counties in the State of Georgia constitute a disaster area as a result of damages caused by severe flooding beginning on March 2, 1991. Applications for loans for physical damage as a result on this disaster may be filed until the close of business on June 10, 1991 and for economic injury until the close of business on January 10, 1992 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, Georgia 30308, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The numbers assigned to this disaster for physical damage are 249406 for the State of Florida and 249506 for the State of Georgia. For economic injury the numbers are 729300 for Florida and 729400 for Georgia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 10, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-9442 Filed 4-22-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2493]

Georgia; Declaration of Disaster Loan Area

Cobb and Douglas Counties and the contiguous counties of Bartow, Carroll, Cherokee, Fulton, and Paulding in the State of Georgia constitute a disaster area as a result of damages caused by tornadoes, severe storms, and heavy rains which occurred on March 29, 1991. Applications for loans for physical damage may be filed until the close of business on June 10, 1991 and for economic injury until the close of business on January 10, 1992 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, Georiga 30308, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 249312 and for economic injury the number is 729200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 10, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-9444 Filed 4-22-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2489]

Mississippi; Declaration of Disaster Loan Area

Tippah County and the contiguous counties of Benton, Prentiss and Union in the State of Mississippi constitute a disaster area as a result of damages caused by severe storms and tornadoes which occurred on March 22, 1991. Applications for loans for physical damage may be filed until the close of business on June 10, 1991 and for economic injury until the close of business on June 10, 1992 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office,

One Baltimore Place, suite 300, Atlanta, Georgia 30308, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125
For Economic Injury:	
Businesses and small agricultural Cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 248912 and for economic injury the number is 728800.

Any counties contiguous to the above-named primary country and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 10, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-9443 Filed 4-22-91; 8:45 am]

BILLING CODE 8025-01-M

[Application Number: 99000053]

Lucky Capital Corp.; Application for a License to Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company (SBIC) under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661, *et seq.*) has been filed by Lucky Capital Corporation (Applicant), 936 Crenshaw Boulevard, suite 300, Los Angeles, California 90019, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1991). The proposed officers, directors, and owners of the Applicant are as follows:

Name and address	Position	Percentage of ownership
Kwang W. Choi, 1325 Woodruff Avenue, Los Angeles, CA 90024	President/General Manager/Director	90
Young H. Shin, 3501 Royal Woods Dr., Sherman Oaks, CA 91403	Secretary/Treasurer/Director	10
Kwang H. Khim, 16900 Chatsworth Street, Apt. No. 112, Granada Hills, CA 91344..	Assistant Manager/Director	0

The Applicant proposes to begin operations with a capitalization of $2 million and will be a source of equity capital and long-term loan funds for qualified small business concerns.

The Applicant intends to conduct its business primarily in the State of California.

As a small business investment company under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to small concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the applicant under their management including profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication shall be addressed to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this notice will be published in a newspaper of general circulation in the Southern and Northern California areas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 16, 1991.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 91-9445 Filed 4-22-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Security Advisory Subcommittee; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Aviation Security Advisory Subcommittee Meeting.

SUMMARY: Notice is hereby given of a meeting of the Policy and Procedures Subcommittee of the Aviation Security Advisory Committee.

DATES: The meeting will be held April 30, 1991, from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Office of the Assistant Administrator for Civil Aviation Security, ACS, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-9863.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Policy and Procedures Subcommittee of the Aviation Security Advisory Committee to be held April 30, 1991, in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

The agenda for the meeting is to discuss the duties and responsibilities of the Federal Security Manager position. Attendance at the April 30, 1991, meeting is open to the public but limited to space available. Members of the public may address the committee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment

if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the subcommittee at any time.

Persons wishing to present statements or obtain information should contact the Office of the Assistant Administrator for Civil Aviation Security, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9863.

Issued in Washington, DC on April 16, 1991.

O.K. Steele,

Assistant Administrator for Civil Aviation Security.

[FR Doc. 91–9595 Filed 4–22–91; 8:45 am]

BILLING CODE 4910–13–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 78
Tuesday, April 23, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Thursday, April 25, 1991, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS:

Closed to the Public

MATTERS TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on various compliance matters.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: (301) 492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, (301) 492–6800

Dated April 18, 1991

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91–9641 Filed 4–19–91; 12:25 pm]

BILLING CODE 6355–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, April 29, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 19, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–9696 Filed 4–19–91; 3:43 pm]

BILLING CODE 6210–01–M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Tuesday, April 30, 1991 at 2:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and complaints
5. Inv. 731–TA–512/513 (Preliminary) (Tart Cherry Juice and Tart Cherry Juice Concentrate from Germany and Yugoslavia)–briefing and vote
6. Any items left over from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Dated: April 15, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–9627 Filed 4–19–91; 11:32 am]

BILLING CODE 7020–02–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Notice

TIME AND DATE: A meeting of the Board of Directors will be held on April 29, 1991. The meeting will commence at 9:30 a.m.

PLACE: The Madison Hotel, 15th and "M" Streets, NW., The Executive Chambers, Washington, DC 20005 (202) 862–1600.

STATUS OF MEETING: Open [A portion of the meeting may be closed], subject to a vote by a majority of the Board of Directors, to discuss personnel, privileged or confidential, personal, investigatory and litigation matters under the Government in the Sunshine Act [5 U.S.C. 552b (c) (2), (4), (5), (7), and (10) and 45 C.F.R. Sections 1622.5 (a), (c), (d), (e), (f) and (h)].

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes—March 25, 1991.
3. Chairman's Report.
4. President's Report.
   a. Competition of Migrant Funds—Status Report.
   b. Competition of Native American One-Time Grants—Status Report.
   c. April 3–4, 1991 California Program Visits.
   d. April 11–12, 1991 American Bar Association Meeting.
   e. April 18, 1991 President's Forum Meeting.
5. Legislative Report.
6. Consideration of Reauthorization Committee's Recommendation on Reauthorization of the Legal Services Corporation.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863–1839.

Date Issued: April 19, 1991.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 91–9697 Filed 4–19–91 3:43 pm]

BILLING CODE 7050–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

DATE: Weeks of April 22, 29, May 6 and 13, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of April 22

Tuesday, April 23

10:45 a.m.
Classified Security Briefing (Closed—Ex. 1)

1:30 p.m.
Discussion/Possible Vote on Browns Ferry Unit 2 Restart (Public Meeting)

Wednesday, April 24

9:00 a.m.
Briefing on Nuclear Plant Aging Research (Public Meeting)

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 29—Tentative

Thursday, May 2

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 6

Monday, May 6

9:00 a.m.
Briefing on Maintenance Rule (Public Meeting)

Tuesday, May 7

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 13

Wednesday, May 15

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): 301–492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: April 18, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91–9678 Filed 4–19–91; 3:43 pm]

BILLING CODE

federal register

Tuesday
April 23, 1991

Part II

Department of Defense

48 CFR Parts 211 and 252
Federal Acquisition Regulation Supplement; Acquisition and Distribution of Commercial Products; Interim Rule and Request for Comments

DEPARTMENT OF DEFENSE

48 CFR Parts 211 and 252

Department of Defense Federal Acquisition Regulation Supplement; Acquisition and Distribution of Commercial Products

AGENCY: Department of Defense (DoD).

ACTION: Interim rule and request for comments.

SUMMARY: The Department of Defense (DoD) is amending the DoD FAR Supplement by adding Subpart 211.70, "Acquisition and Distribution of Commercial Products", and adding new clauses at 252.211. Subpart 211.70 establishes policies and procedures for acquiring commercial items.

DATES: Effective date: The interim rule is effective May 28, 1991.

Comment date: Comments on the interim rule should be submitted in writing at the address shown below on or before June 24, 1991, to be considered in the formulation of the final rule. Please cite DAR Case 89–316 in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments on the interim rule to: Special Assistant for Acquisition Reform, ATTN: Mr. Louis Gaudio, Procurement Analyst, DDP/AR, Room 3E144, Pentagon, Washington, DC 20301–8000.

FOR FURTHER INFORMATION CONTACT: Mr. Louis Gaudio, Procurement Analyst, (202) 693–5640.

SUPPLEMENTARY INFORMATION:

A. Background

Section 824(b) of the FY90/91 National Defense Authorization Act (Pub. L. 101–189) requires the Department to develop new regulations implementing a simplified uniform contract format for the acquisition of commercial items and to require the use of such format for the acquisition of commercial items to the maximum extent practicable. The interim rule modifies DoD acquisition policy and procedures by establishing a simplified uniform contract for acquisition of commercial items. The new regulations:

—Prohibit Government specified quality systems or quality programs.
—Restrict Government in-plant inspection (tailored inspection requirements are permitted for items having critical applications).
—Prohibit the use of Government specified designs, manufacturing processes or procedures.
—Prohibit the use of Military Standards or Military Specifications that would impede an offeror from furnishing commercial items to satisfy a DoD requirement.
—Require packaging and marking in accordance with a contractor's standard practice to the maximum extent practicable.
—Limit the acquisition of technical data.
—Require commercial computer software to be acquired, to the extent practicable, under the same license as is provided to the general public.
—Prohibit unilateral specification changes.
—Restrict the number of Government clauses contractors must flow down to their subcontractors or suppliers.
—Reduce the number of contract clauses that may be used in a DoD contract for commercial items.

B. Public Comments

A proposed rule was published under DAR case 90–420 in the **Federal Register** on July 11, 1990 (55 FR 28514). During the public comment period, 516 comments were received from 28 commentors. The changes incorporated as a result of the public comments and internal review of the proposed rule are significant and it is necessary to publish an interim rule to provide another opportunity for comment.

The most frequent public comments concerned: the applicability of certain FAR/DFARS clauses to commercial items; the flow down of FAR/DFARS clauses to subcontractors and suppliers; the technical data clause; the inspection and acceptance clause; the termination clause; the definition of commercial items; and, the procedures for the acquisition of commercial items available from only one source and the related price certification.

The significant changes incorporated in the interim rule as a result of the public comments are:

—The restrictions on the FAR/DFARS clauses that prime contractors may include in contracts with subcontractors and suppliers have been clarified.
—The definition of commercial items has been changed to include licensed items.
—Tailored inspection requirements have been included for items with critical applications.
—The procedures for acquiring commercial items available from only one source have been deleted. The related certification requirements and Cost Accounting Standards requirements have been deleted also.

Other changes incorporated in the interim rule are:

—The conditions applicable to the Government's acquisition and use of commercial computer software have been revised.
—The threshold for submission of certified cost or pricing data for contract modifications is increased to $500,000.

C. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. Comments are invited from small businesses and other interested parties and will be considered in determining whether or not Final Regulatory Flexibility Analysis is required. Comments from small businesses concerning the affected DFARS subparts will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and must cite DAR Case 90–610D in correspondence.

D. Paperwork Reduction Act

The information collection requirements in this interim rule have been approved through September 30, 1990 under OMB Control Number 0704–0318. The information collection requirements will be resubmitted for approval of the final rule as required by 44 U.S.C. 3501 et seq.

E. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that this coverage be issued as an interim rule. This action is necessary to implement section 824 of the FY 90 DoD Authorization Act, Pub. L. 101–189 (enacted November 29, 1989).

List of Subjects in 48 CFR Parts 211 and 252

Government procurement.

Linda E. Greene,

Deputy Director, Defense Acquisition Regulatory System.

Therefore, it is proposed that 48 CFR parts 211 and 252 be amended as follows:

PART 211—[AMENDED]

1. The authority citation for 48 CFR parts 211 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 211—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

2. Subpart 211.70 is added as follows:

Subpart 211.70—Contracting for Commercial Items

Subpart 211.70—Contracting for Commercial Items

211.7000 Scope of subpart.

This subpart implements section 824(b) of Public Law 101–189 by establishing policies, procedures and a simplified uniform contract format for the acquisition of commercial items.

211.7001 Definitions.

As used in this subpart—

Commercial items means items regularly used in the course of normal business operations for other than Government purposes which:

(1) Have been sold or licensed to the general public;

(2) Have not been sold or licensed, but have been offered for sale or license to the general public;

(3) Are not yet available in the commercial marketplace, but will be available for commercial delivery in a reasonable period of time;

(4) Are described in paragraphs (1), (2), or (3) that would require only minor modification in order to meet the requirements of the procuring agency.

Competition means the solicitation of offers from more than one potential source where award will be made to the responsive, responsible offeror whose bid or proposal is most advantageous to the Government, price and, where appropriate, other factors considered or, when a solicitation contemplates more than one award, the offerors independently compete for a proportionate share (0 to 100 percent) of the award to be determined by the evaluation criteria specified in the solicitation. The term *competition* includes contracting using full and open competition (see FAR 6.1 and FAR 6.2) and other forms of competition authorized in FAR 6.3.

Existing or prior sources means entities that are furnishing or previously furnished items to the Government, in accordance with Government unique product descriptions, drawings or specifications, that are being replaced by commercial items.

Minor modification means a modification to a commercial item that does not alter the commercial item's function or essential physical characteristics.

Subcontractor means an entity producing an item for another entity to the other entity's specifications, designs or drawings. The term does not include entities that produce such items to their own specifications, designs or drawings for sale to others.

Supplier means an entity that produces items to its own specifications, designs or drawings for sale to others.

211.7002 Policy.

It is Department of Defense policy to:

(a) Satisfy its requirements, to the maximum extent practicable, through competitive acquisition of commercial items.

(b) Competitively acquire commercial products which best satisfy the Government's requirements, price and other factors considered.

(c) Not require offerors or contractors to submit certified cost or pricing data or require offerors or contractors to obtain certified cost or pricing data from their subcontractors or suppliers when contracting for commercial items under this subpart.

(d) Require prime contractors to include in contracts with their subcontractors or suppliers, as those terms are defined at 211.7001, only the clauses and provisions required by law or executive order to be included in such contracts.

§ 211.7003 Applicability.

§ 211.7003–1 General.

(a) This subpart shall be used, to the maximum extent practicable, to competitively acquire commercial items.

(b) This Subpart shall not be used to acquire:

(1) Commercial items on a non-competitive basis.

(2) Services (other than the services included in a competitive solicitation for commercial items that are required by the solicitation to be furnished by the successful offeror in direct support of the items being acquired);

(3) Small purchases under FAR part 13 and DFARS part 213.

(4) Bakery and dairy products (See 217.73) and perishable foods;

(5) Petroleum, crude oil, unfinished oils and finished products as defined in FAR 25.108(d)(2);

(6) Items set forth in 225.70 that are subject to Authorization and Appropriations Act Restrictions unless the applicable exceptions set forth in 225.70 apply.

§ 211.7003–2 Existing or Prior Sources.

(a) The Head of a Military Department or Defense Agency, or his or her designee, may determine that it is in the Government's interests to permit existing or prior sources of items to participate in a competition for a commercial item when:

(1) A commercial item will replace an item that is being or previously was furnished to the Government in accordance with Government unique product descriptions, drawings or other specifications; and,

(2) The existing or previously furnished item will compete with commercial items under the same terms, conditions and evaluation/award criteria.

(b) The authority and criteria in paragraph (a) of this subsection also apply to minor modifications (as that term is defined at 211.7001) of existing or previously furnished items when the minor modifications are necessary to comply with the Government's solicitation requirements.

(c) The policies, procedures, solicitation provisions and contract clauses applicable to commercial items under this Subpart shall apply also to existing or previously furnished items permitted to participate in a competition conducted under this Subpart.

(d) The provision at 252.211–7012, Certifications—Commercial Items—Competitive Acquisitions, shall be used with its Alternate I when the contracting activity has determined that it is in the Government's interests to permit existing or prior sources to participate in a competition for a commercial item.

§ 211.7004 Requirements.

§ 211.7004–1 Precedence of part 211.

(a) *General.* (1) Contracting officers shall follow the regulatory text contained in part 211 when acquiring commercial items. Guidance and procedures contained in other FAR and DFARS regulatory text shall also be followed provided that the guidance and procedures do not conflict with the regulatory text in part 211. In the event of a conflict among the part 211 regulatory text and any other FAR or DFARS regulatory text, the part 211 regulatory text shall control and have precedence.

(2) Notwithstanding the prescriptions contained in other FAR or DFARS regulatory text, only the contract clauses, solicitations provisions, representations and certifications and special contract requirements prescribed for use under Part 211 shall be included in solicitations and contracts under Part 211 unless the contracting officer has determined in writing that additional special contract requirements, contract clauses and solicitation provisions are essential for the protection of the Government's interests in a particular contract.

(3) Supplementation of subpart 211.70 is not authorized without the prior written approval of the Director of Defense Procurement.

(b) *Contract Type.* Only firm fixed price contracts, or as provided in paragraph (c) of this subsection, fixed price contracts with economic price adjustment provisions, shall be used to acquire commercial items under this subpart. The term "firm fixed price contracts" includes orders under Indefinite-Delivery contracts (see FAR 16.502 through 16.504 and 16.506) when the prices at which items may be acquired are established as firm fixed prices or fixed prices with economic price adjustment.

(c) *Economic Price Adjustment.* Solicitations for commercial items shall not require contract performance that is extended beyond customary industry practice for the product to be acquired. Contracting officers may consider the use of fixed price contracts with economic price adjustment provisions, subject to the limitations at FAR 16.203–3, if an extended period of performance cannot be avoided and the other conditions described in FAR 16.203–2 exist. Economic price adjustment provisions shall be tailored to the particular contracting situation.

(d) *Specification Requirements.* Commercial items shall be acquired using specifications that describe the item in terms of the performance required and form, fit and function or other essential physical characteristics. Specifications shall not include:

(1) Specific designs, manufacturing processes or procedures; or

(2) Military standards or military specifications which would restrict a potential contractor's ability to satisfy the Government's requirements.

(e) *Contract Quality Requirements.* Contracting officers shall not require contractors to comply with a Government specified quality assurance system or quality program (see FAR 46.202–3). The contractor shall be required to maintain quality assurance systems adequate to assure that the items to be furnished under the contract conform with all contractual requirements. To the extent practicable, quality assurance systems shall be consistent with the contractor's standard commercial practices.

(f) *Inspection Requirements.* (1) Government inspection of items acquired under this subpart shall be limited to verifying that items tendered for acceptance conform to contractual requirements. Inspection and test prior to tender for acceptance is the contractor's responsibility and shall be performed by the contractor in accordance with the contractor's standard practice. Therefore, solicitations and contracts will not provide for inspections or tests to be performed by the Government prior to the time the items are tendered for acceptance. However, contracting officers may tailor inspection requirements when it is determined that the commercial items to be furnished under the contract have critical applications (see FAR 46.203(c)).

(2) The place or places at which inspection and acceptance will be performed, the acceptance criteria and any associated requirements shall be identified in Section E, Inspection and Acceptance, of the solicitation and contract. These requirements may also be included in the specifications used to acquire the items.

(3) The clause at 252.211–7004, Inspection and Acceptance—Commercial Items, shall be included in all solicitations and contracts for commercial items under this Subpart. Paragraph (b)(1) of the clause at 252.211–7004 may be modified appropriately if the contracting officer has determined that the commercial items to be furnished under the contract will have a critical application.

(g) *Packaging and Marketing.* Commercial items shall be packaged and marked in accordance with the contractor's standard practices unless unique military storage or operational needs require special packaging and marking. Requiring activities shall document the contract file to clearly identify the needs or circumstances which mandate the use of special packaging or marking requirements.

(h) *Technical Data, Computer Software and Commercial Computer Software.* The terms *computer software, computer software documentation, commercial computer software, commercial computer software documentation,* and *technical data* are used in paragraphs (h)(1) through (h)(4) of this subsection to describe the types of technical data or computer software that may be acquired under this subpart and the conditions placed upon the Government's use of such technical data and computer software. For purposes of paragraphs (h)(1) through (h)(4):

Computer software means a set of instructions, rules, routines or statements that cause a computer to perform a specific operation or series of operations; and, source code listings, object codes, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated or recompiled.

Commercial computer software means computer software that has been developed at private expense for the commercial marketplace and is not in the public domain. The term *commercial computer software* includes any commercial computer software that has been modified or will be modified to satisfy requirements expressed in a competitive procurement solicitation.

Computer software documentation means owner's manuals, user's manuals, and operating instructions and other items, regardless of storage media, that explain the capabilities of the computer software or provide operating instructions for using the software to obtain desired results from a computer.

Commercial computer software documentation means the computer software documentation customarily provided to the public at, or subsequent to, the time the commercial computer software is licensed or provided to the public.

Technical data means recorded information, regardless of format or storage media, of a scientific or technical nature. Technical data includes computer software documentation and computer data bases but does not include computer sofware, financial data, administrative data, or cost or pricing data.

(1) *Technical Data (other than Commercial Computer Software Documentation) and Computer Software (other than Commercial Computer Software).* (i) Contracting officers shall not acquire technical data or computer software except:

(A) Technical data or computer software required to maintain and repair commercial items properly when maintenance or repair is not otherwise the contractor's responsibility under the contract;

(B) Technical data or computer software that describe or provide the proper installation, operating or handling procedures for commercial items when such technical data or computer software are not customarily

provided to the public as part of a commercial item's price;

(C) Technical data or computer software that describe the modifications made to commercial items, including the commercial items' related computer software or computer software documentation, in order to meet the requirements of the procurement solicitation;

(D) Technical data or computer software that describe the modifications made to commercial computer software or its related commercial computer software documentation, in order to meet the requirements of the procurement solicitation when the modified commercial computer software and its related documentation are the commercial items being furnished under the contract.

(ii) The Government shall use the technical data and computer software acquired under a contract for commercial items only as provided in paragraph (b) of the clause at 252.211–7015, Technical Data and Computer Software—Commercial Items.

(iii) All technical data to be acquired under the contract shall be listed on DD Form 1423, Contract Data Requirements List.

(2) *Commercial Computer Software and Commercial Computer Software Documentation.* (i) Contracting officers shall acquire only the commercial computer software and commercial computer software documentation customarily provided to the public. Except as provided in subparagraph (h)(1)(i)(D), contracting officers shall not require offerors or contractors to furnish information related to the commercial computer software or commercial computer software documentation that is not customarily provided to the public.

(ii) Commercial computer software and commercial computer software documentation shall be acquired, to the maximum extent practicable, under the same license provided by the software developer or distributor to the public. Tailored licenses may be included in solicitations for commercial computer software or commercial computer software documentation if the contracting officer has determined, in writing, based upon a thorough market analysis, that the licenses offered to the public are not in the Government's interests (licenses that obligate the licensee to purchase additional quantities of the software, purchase future upgrades of the software or purchase other items or services from the licensor, distributor or any other person as a condition of the license are examples of licenses that may not be in the Government's interests).

(iii) A tailored license shall clearly set forth the conditions under which the Government may use the commercial computer software and any related commercial computer software documentation. Solicitations containing a tailored license must require an offeror who is not the commercial computer software or commercial computer software documentation licensor to obtain, and submit with its offer, the licensor's written agreement to the tailored license as a condition for award. Tailored license agreements shall be included in Section H, "Special Contract Requirements," of the contract.

(iv) The Government shall use commercial computer software or commercial computer software documentation only as provided in paragraph (c) of the clause at 252.211–7015, Technical Data and Computer Software—Commercial Items.

(3) The clause at 252.211–7015, Technical Data and Computer Software—Commercial Items, shall be included in all solicitations and contracts for commercial items.

(4) The clauses at 252.211–7016, Technical Data and Computer Software—Withholding of Payment—Commercial Items, and 252.211–7017, Certification of Technical Data Conformity—Commercial Items, shall be included in solicitations and contracts for commercial items when technical data or computer software, including technical data or computer software that describe modifications to commercial computer software or commercial computer software documentation, will be acquired. These clauses shall not be included in solicitations and contracts that will procure only commercial computer software or commercial computer software documentation.

(i) *Certified Cost or Pricing Data.* (1) Contracting officers shall not require offerors to submit certified cost or pricing data or require offerors to obtain certified cost or pricing data from their subcontractors or suppliers when competitively acquiring commercial items including a sole offer received in response to a competitive solicitation if the criteria at 211.7004–1(o) (3) and (4) are satisified.

(2) Contracting officers shall require prime contractors to submit certified cost or pricing data for contract modifications which result in a price adjustment involving aggregate increases and/or decreases in costs, plus applicable profits, of more than $500,000, unless the price adjustment is exempt from submission and certification requirements as provided at FAR 15.804–3.

(3) For purposes of this Subpart, the phrase "the cost or pricing data" used in FAR 15.804–2(b) means only the cost or pricing data necessary to price the contract modification.

(4) The clauses at 252.211.7010, Price Reduction for Defective Cost or Pricing Data—Contract Modifications—Commercial Items, and 252.211–7011, Audit of Contract Modifications—Commercial Items, shall be included in all solicitations and contracts for commercial items.

(j) *Warranties*—(1) *Commercial Items that are Weapon Systems.* Contracting officers shall include tailored, cost effective warranties in solicitations and contracts for commercial items that are weapon systems in accordance with the policies and procedures at 246.770. The term "weapon system," as used in 10 U.S.C. 2403 and 246.770, does not include commercial items sold in substantial quantities to the general public.

(2) *Commercial Items that are not Weapons Systems.* Commercial items shall be acquired with the warranties provided to the public as customary trade practice if the customary trade practice warranties adequately protect the Government's interests. Tailored warranties shall be used when customary trade practice warranties do not adequately protect the Government's interests or tailored warranties are necessary to assure that commercial items intended for use as components or subsystems of weapon systems are procured with warranties that do not compromise or invalidate the weapon system warranty. Tailored warranties should be considered when commercial items are not customarily warranted to the public. However, the criteria at FAR 46.703 shall be considered to determine if it is appropriate to require offerors to provide warranties for commercial items that are not customarily warranted to the public.

(i) *Customary Trade Practice Warranties.* (A) Contracting officers shall consider a warranty to be in the Government's interests when it is customary trade practice to provide a warranty to the general public. Market research and analysis will disclose if a particular class of commercial items (e.g., shoes, radar sets, office equipment, etc.) is customarily offered for sale to the general public with a warranty.

(B) A commercial item warranty that limits the Government's rights under the Inspection and Acceptance—Commercial Items clause (252.211–7004) does not adequately protect the

Government's interests. Similarly, a warranty's duration must be considered when determining whether or not the warranty adequately protects the Government's interests. A warranty period that does not provide a reasonable time for a commercial item's operational use to verify that the item conforms to contractual requirements does not adequately protect the Government's interests. For example, if the Government intends to store the item for a period prior to the item's actual use, the duration of the warranty should cover both the storage time and a reasonable period of actual use.

(C) A warranty is a price related factor. Therefore, the evaluation factors included in competitive solicitations shall be structured to permit consideration of the relative value to the Government of the warranty offered by each offeror.

(ii) *Tailored warranties.* (A) Contracting officers may tailor a contract specific warranty clause or appropriately tailor the FAR warranty clauses at FAR 52.246–17, Warranty of Supplies of a Non-Complex Nature, 52.246–18, Warranty of Supplies of a Complex Nature, or 52.246–19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria, and their alternates to provide adequate protection of the Government's interests in a particular procurement. A tailored warranty clause shall not limit the Government's rights under the Inspection and Acceptance—Commercial Items clause (252.211–7004) and shall provide that the warranty applies notwithstanding inspection and acceptance or of any other terms and conditions of the contract. The FAR warranty clauses or their alternates may be used without modification only if they do not limit the Government's rights under the Inspection and Acceptance—Commercial Items clause (252.211–7004) and provide that the warranty applies notwithstanding inspection and acceptance or other terms and conditions of the contract.

(B) Contracting officers shall assure that warranty provisions are consistent with other contractual requirements (e.g., failure free warranties may not be appropriate when acceptance criteria are stated in terms of Mean Time Between Failure or other probability based requirements that assume an "acceptable" level of discrepancies). The duration of a warranty for an item intended for use as a subsystem or component of a weapon system should be established giving consideration to the duration of the weapon system warranty.

(C) Contracting Officers preparing solicitations requiring offers based upon a Government specified warranty are encouraged to permit offerors to make alternative offers based upon alternative warranty provisions, including an offeror's standard commercial warranty. Solicitations permitting submission of alternative offers shall include evaluation factors that permit a realistic assessment of the relative value to the Government of offers based upon the Government specified warranty and alternative warranty provisions. The solicitations shall clearly advise the offerors that an alternative offer shall be considered for award only if its alternative warranty provision adequately protects the Government's interests.

(k) *Contract administration.* Contracting officers shall not perform, or have performed, Production Surveillance and Reporting procedures at FAR 42.11 when contracting for commercial items.

(l) *Contract changes*—(1) *General.* A change to a contract for a commercial item can have a more disruptive and costly effect on both the contractor and the Government than a corresponding change to an item which has been specifically designed and developed for the Department of Defense. Therefore, the ordering of changes, particularly specification changes, is strongly discouraged. Requirements personnel and contracting officers shall carefully evaluate the need for a change prior to ordering any change. An example of an extraordinary circumstance under which a change may be necessary is a change to the form, fit or function of a commercial item necessitated by a change to other equipment or systems of which the commercial item is, or is intended to be, a component.

(2) *Unilateral changes.* The contracting officer may make unilateral changes only to the method of shipment, packing or place of delivery specified in the contract. The changes must be in writing and may be made at any time during performance of the contract.

(3) *Bilateral changes.* Specification changes shall be made only by a bilateral modification to the contract. The bilateral modification shall be prospectively, definitively priced unless the Government's interests demand that performance begin immediately and negotiation of a definitive price is not possible in sufficient time to meet the Government's requirements. In the latter event, the bilateral modification shall:

(i) Include a maximum price for the change and the contractor's agreement that the definitive price for the change shall not exceed the maximum price; and,

(ii) Contain definitization schedules established in accordance with 217.7503(b)(3).

(4) *Certified cost or pricing data.* Certified cost or pricing data may be required when the definitive price of a contract change results in a price adjustment involving aggregate increases and/or decreases in costs, plus applicable profits, of more than $500,000, as provided at 211.7004–1(i) and FAR 15.804. Certified cost or pricing data are not required when establishing the maximum price for a contract change in accordance with paragraph (l)(3) of this subsection or when the price adjustment for a change is exempt from the requirements for certified cost or pricing data as provided at FAR 15.804–3.

(5) The clause at 252.211–7002, Changes—Commercial Items, shall be included in all solicitations and contracts for commercial items.

(m) *Progress payments.* Contracting officers shall not provide for customary or unusual progress payments when contracting for commercial items. For purposes of this subpart, the term "standard commercial items" as used at FAR 32.502–1(c) includes commercial items requiring minor modifications to meet the requirements of the procuring agency.

(n) *Telegraphic and facsimile submission of offers.* (1) Contracting officers shall authorize the submission of telegraphic or facsimile offers to the maximum extent practicable. Telegraphic offers include offers, modifications of offers, or withdrawals of offers that are delivered to the Government by telegram or mailgram, or transmitted to the Government by telex. The Government's telex number shall be provided to offerors in paragraph (g) of the solicitation provision at 252.211–7007, Telegraphic Submission of Offers—Commercial Items, if telex equipment is available at the location designated in the contract for submission of offers.

(2) Contracting officers shall require offerors submitting telegraphic offers to submit a signed, original offer within five (5) working days from the date specified for receipt of offers in the solicitation. Contracting officers may provide offerors who fail to make a timely response to the contracting officer's request for an original, signed offer an opportunity to cure the deficiency in accordance with the procedures at FAR 14.405 and 15.607. The contracting officer shall specify the time and date by which the deficiency

must be cured. An offeror's failure to cure the deficiency within the time specified by the contracting officer shall render bid submitted in response to an invitation for bids nonresponsive and ineligible for award and shall render a proposal submitted in response to a request for proposals ineligible for award.

(3) Contracting officers may provide offerors who fail to sign a facsimile offer, or who fail to make a timely response to the contracting officer's request for an original, signed solicitation cover sheet an opportunity to cure the deficiency in accordance with the procedures at FAR 14.405 and 15.607. The contracting officer shall specify the time and date by which the deficiency must be cured. An offeror's failure to cure the deficiency within the time specified by the contracting officer shall render a bid submitted in response to an invitation for bids nonresponsive and ineligible for award and shall render a proposal submitted in response to a request for proposals ineligible for award.

(o) *One offer.* (1) When only one offer is received from a responsive, responsible offeror in response to a competitive solicitation, the contracting officer shall re-examine the market analyses and specifications for the commercial item to assure that the initial assumptions contained in the solicitation did not unduly restrict competition.

(2) The contracting officer shall cancel the solicitation if it is determined that the specifications unduly restricted competition.

(3) The contracting officer shall make an award in accordance with the procedures of this subpart if the specifications did not unduly restrict competition and the initial assumptions of market conditions were valid. The offer received shall be considered an offer submitted under conditions of full and open competition. The offeror shall not be required to submit certified cost or pricing data or to obtain certified cost and pricing data from its subcontractors and suppliers.

(4) The contracting officer shall, if the specifications did not unduly restrict competition but the initial assumptions of market conditions were not valid:

(i) For sealed bids, proceed with award in accordance with the procedures at FAR 14.407.

(ii) For other than sealed bids, the contracting officer shall perform a price analysis to determine if the price offered is reasonable. If price analysis demonstrates that the price is reasonable, the contracting officer may proceed with award of the contract. The price offered shall be considered a price based upon adequate price competition. The offeror shall not be required to submit certified cost or pricing data or to obtain certified cost or pricing data from its subcontractors and suppliers. If price analysis alone cannot demonstrate price reasonableness, the contracting officer shall either cancel the solicitation or enter into negotiations with the offeror under the procedures at FAR part 15 and DFARS part 215.

(p) *Clauses to be included in contracts with subcontractors and suppliers.* (1) A prime contractor shall not be required to include in its contracts with subcontractors and suppliers, as those terms are defined at 211.7001, or require its subcontractors and suppliers to include in their contracts with lower tier subcontractors and suppliers, any contract clauses except: (i) clauses required to implement provisions of law applicable to such contracts; and, (ii) clauses determined by the Secretary of Defense to be appropriate for such contracts.

(2) Subparagraphs (p)(2)(i) through (p)(2)(iii) identify the FAR and DFARS clauses that implement provisions of law or Executive Order that may apply to subcontractors and suppliers under certain conditions or monetary thresholds:

(i) All contracts with subcontractors and suppliers:

FAR 52.203–12 Limitation on Payments to Influence Certain Federal Transactions.
FAR 52.222–22 Previous Contracts and Compliance Reports.
FAR 52.222–26 Equal Opportunity.
FAR 52.222–35 Affirmative Action for Special Disabled and Vietnam Era Veterans.
FAR 52.222–36 Affirmative Action for Handicapped Workers.
FAR 52.222–37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.
FAR 52.225–12 Notice of Restrictions on Contracting with Sanctioned Persons.
FAR 52.225–13 Restrictions on Contracting with Sanctioned Persons.
252.223–7005 Notice of Radioactive Materials.
252.225–7001 Buy American Act and Balance of Payment Program.
252.225–7006 Buy American Act-Trade Agreement Act and the Balance of Payments Program.
252.225–7015 United States Products Certificate (Military Assistance Program).
252.225–7016 United States Products (Military Assistance Program).

(ii) Only contracts with subcontractors:

FAR 52.220–4 Labor Surplus Area Subcontracting Program.
FAR 52.222–25 Affirmative Action Compliance.
FAR 52.223–1 Clean Air and Water Certification.
FAR 52.223–2 Clean Air and Water.
FAR 52.225–10 Duty-Free Entry.
FAR 52.225–11 Certain Communist Areas.
FAR 52.222–21 Certification of Nonsegregated Facilities.
252.211–7011 Audit of Contract Modifications-Commercial Items.
252.225–7009 Preference for Certain Domestic Commodities.
252.247–7203 Transportation of Supplies by Sea.

(iii) Only first tier subcontracts

FAR 52.209–6 Protecting Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
FAR 52.215–1 Examination of Records by Comptroller General.
FAR 52.219–8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.
FAR 52.219–9 Small Business and Small Disadvantaged Business Subcontracting Plan.
252.203–7001 Special Prohibition on Employment.
252.219–7000 Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts).

(3) The clause at 252.211–7021, Clauses to be included in Contracts with Subcontractors and Suppliers—Commercial Items, shall be included in all solicitations and contracts for commercial items under this Subpart. Paragraph (b)(1) of that clause also includes the clause at FAR 52.222–1, Notice to the Government of Labor Disputes. Accurate information concerning actual or potential labor disputes cannot be obtained unless the clause at 52.222–1, although not required by law or Executive Order, is also included in the prime contractor's contracts with its subcontractors or suppliers.

(q) *Award of contract.* (1) Contracts for commercial items shall be awarded to:

(i) For sealed bids, the responsive, responsible bidder whose bid is most advantageous to the Government considering only price and the price related factors included in the solicitation; and,

(ii) For other than sealed bids, the responsive, responsible offeror whose proposal has been determined, in accordance with the evaluation criteria contained in the solicitation, to be most advantageous to the Government.

(2) *Forms.* (i) Contracts resulting from invitations for bids shall be awarded on the forms prescribed at FAR 14.407(d)(1).

(ii) Contract awards using procedures other than sealed bidding procedures, including awards contemplated when only one response is received to a competitive request for proposals, shall be made using the award portion of the

solicitation document, either SF 33, Solicitation Offer and Award (FAR 53.301–33), or SF 1447, Solicitation/Contract (FAR 53.301–1447), unless the contracting officer has had discussions with the offerors within the competitive range and bilateral execution of a SF 26, Award/Contract (FAR 53.301–26), would more appropriately reflect acceptance of the modified offer resulting from the discussions or negotiations.

(3) Section 802 of the FY91 National Defense Authorization Act (Pub. L. 101–510) requires the Government to state its intention to award with or without discussions. The provision at 252.211–7014, Contract Award—Commercial Items, which states an intention to award without discussions unless discussions prove to be necessary, shall be included in all solicitations for commercial items. The provision shall be appropriately modified if, prior to release of a solicitation, the contracting officer anticipates evaluation and award based on discussions.

211.7004–2 Format for Solicitations and Contracts.

(a) Invitations for bids and resulting contracts shall be prepared in either the Uniform Contract Format at FAR 14.201 or the simplified contract format described at FAR 14.201–9.

(b) Requests for proposals and resulting contracts shall be prepared in either the Uniform Contract Format at FAR 15.406–1 or the simplified contract format described at FAR 15.416.

211.7004–3 Part I—The Schedule.

The contracting officer shall prepare the Schedule as follows:

(a) *Section A, Solicitation/Contract Form.* Invitations for bids and requests for proposals shall be prepared on either SF 33, Solicitation Offer and Award (FAR 53.301–33), or SF 1447, Solicitation/Contract (FAR 53.301–1447), which serves as the first page of the solicitation.

(b) *Section B, Supplies and Prices.* Provide a brief description of the commercial items or incidental services supporting those items to be acquired under each line item, and the quantities and units of measure (i.e., gross, dozen, etc.) applicable to each line item.

(c) *Section C, Description/Specification.* Include only specifications that describe the item in terms of the performance required and form, fit and function or other essential physical characteristics. Specifications shall not include:

(1) Specific designs, manufacturing processes or procedures; or

(2) Military standards or military specifications which would restrict a potential contractor's ability to satisfy the Government's requirements.

(d) *Section D, Packaging and Marking.* Contracting officers shall require packaging and marking to be accomplished in accordance with the offeror's standard practices unless the use of special packaging and marking has been justified (see 211–7004–1(g)). Any special packaging and marking requirements shall be clearly identified.

(e) *Section E. Inspection and Acceptance.* Solicitations and contracts shall identify the place(s) where inspection and acceptance will be performed and the acceptance criteria.

(f) *Section F. Delivery Schedule.* Solicitations and contracts shall identify the date(s) and place(s) of delivery, and shall provide shipping instructions if necessary.

(g) *Section G. Contract Administration Information.* This section may be used to supplement, if necessary, the contract administration information provided on the cover sheet.

(h) *Section H. Special Contract Requirements.* Contracting officers shall include in this section economic price adjustment provisions, warranty provisions, commercial computer software licensing agreements and any other special contract requirement that the contracting officer has determined, in writing, is essential for the protection of the Government's interests in a particular contract.

211.7004–4 Part II—Contract Clauses.

Section I, Contract Clauses.

The contracting officer shall include in all solicitations and contracts under this Subpart: all the clauses included in 211.7005(a); any applicable clauses from 211.7005(b); and, any other contract clauses that the contracting officer has determined, in writing, are esssential for the protection of the Government's interests in a particular contract.

211.7004–5 Part III—List of Exhibits and Attachments.

Section J, List of Exhibits and Attachments. The Contracting officer shall list the title, date, and number of pages of each attached document.

211.7004–6 Part IV—Representations and Instructions.

The contracting officer shall prepare the representations and instructions as follows:

(a) *Section K, Representations and Certifications.* (1) Only the representations and certifications, or submissions of other information by offerors which are authorized for use under this subpart (See 211.7005(c)) shall be included in the solicitation.

(2) The certification at 252.211–7012, Certifications—Commercial Items—Competitive Acquisitions, and the representation at 252.211–7013, New Material—Commercial Items, shall be used in all invitations for bids and requests for proposals. Alternate 1 of the certification at 252.211–7012 shall be used as prescribed at 211.7003–2(d).

(3) Solicitations and contracts under this Subpart shall include the provision at 252.211–7020, Business Type Certification—Commercial Items, in lieu of the representations and certifications prescribed at FAR Part 19 and DFARS Parts 219 and 220.

(b) *Section L, Instructions, Conditions, or Notices.* (1) Insert in this section the applicable solicitation provisions from 211.7005(d), any other solicitation provisions that the contracting officer has determined, in writing, are essential for the protection of the Government's interests in a particular contract, and any other information which may be required to facilitate an offeror's understanding of the solicitation.

(2) The solicitation provisions at FAR 52.215–9, Submissions of Offers, FAR 52.215–12, Restriction on Disclosure and Use of Data, FAR 52.215–13, Preparation of Offers, FAR 52.215–14, Explanation to Prospective Offerors, FAR 52.216–1, Type of Contract, 252.211–7009, General Solicitation Information and Definitions—Commercial Items, and 252.211–7014, Contract Award—Commercial Items, shall be included in all invitations for bid and requests for proposals.

(3) The solicitation provision at 252.211–7018, Late Submissions, Modifications and Withdrawals of Offers—Commercial Items, shall be included in all invitations for bid and requests for proposals issued in the United States or Canada that require the submission of offers to a contracting office in the United States or Canada.

(4) The solicitation provisions at 252.211–7019, Late Submissions, Modifications and Withdrawals of Offers—Commercial Items (Overseas), shall be included in all invitations for bid and requests for proposals requiring the submission of offers to a contracting office outside the United States and Canada.

(5) The solicitation provision at 252.211–7007, Telegraphic Submission of Offers—Commercial Items, shall be incorporated in all invitations for bid and requests for proposals when telegraphic submission of offers is authorized.

(6) The provision at 252.211–7008, Facsimile Submission of Offers—Commercial Items, shall be included in

all invitations for bid and requests for proposals when submission of facsimile offers is authorized.

(c) *Section M, Evaluation Factors for Award.*

(1) When sealed bids will be solicited, identify the price related factors and subfactors, if any, other than the bid price that will be considered in evaluating bids and awarding the contract.

(2) When proposals will be solicited, the solicitation shall clearly advise offerors that award will be made to the offeror whose offer is most advantageous to the Government. The solicitation shall identify all factors and any subfactors that will be considered in awarding the contract and state the relative importance the Government places on those evaluation factors and subfactors. As prescribed at FAR 15.605(b), price and quality shall be addressed in every source selection.

211.7005 Contract Clauses.

(a) The contracting officer shall insert the following required clauses in Section I of all solicitations and contracts awarded under this subpart:

(1) FAR 52.203–1 Officials Not to Benefit.

(2) FAR 52.203–3 Gratuities.

(3) FAR 52.203–6 Restriction on Subcontractor Sales to the Government.

(4) FAR 52.203–7 Anti-Kickback Procedures.

(5) FAR 52.203–10 Price or Fee Adjustment for Illegal or Improper Activity.

(6) FAR 52.209–6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.

(7) FAR 52.219–8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.

(8) FAR 52.219–13 Utilization of Women-Owned Small Businesses.

(9) FAR 52.222–26 Equal Opportunity.

(10) FAR 52.222–35 Affirmative Action for Special Disabled and Vietnam Era Veterans.

(11) FAR 52.222–36 Affirmative Action for Handicapped Workers.

(12) FAR 52.222–37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.

(13) FAR 52.223–6 Drug-Free Workplace.

(14) FAR 52.225–13 Restrictions on Contracting with Sanctioned Persons.

(15) FAR 52.229–3 Federal, State, and Local Taxes.

(16) FAR 52.232–23 Assignment of Claims.

(17) FAR 52.233–1 Disputes.

(18) 252.203–7001 Special Prohibition on Employment.

(19) 252.203–7002 Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former Department of Defense (DoD) Employees.

(20) 252.211–7000 Termination—Commercial Items.

(21) 252.211–7001 Invoice and Payment—Commercial Items.

(22) 252.211–7002 Changes—Commercial Items.

(23) 252.211–7003 Patents and Copyright Indemnification—Commercial Items.

(24) 252.211–7004 Inspection and Acceptance—Commercial Items.

(25) 252.211–7005 Limitation of Liability—Commercial Items.

(26) 252.211–7006 Title and Risk of Loss—Commercial and Items.

(27) 252.211–7010 Price Reduction for Defective Cost or Pricing Data—Contract Modifications—Commercial Items.

(28) 252.211–7011 Audit of Contract Modifications—Commercial Items.

(29) 252.211–7015 Technical Data and Computer Software—Commercial Items.

(30) 252.211–7021 Clauses to be Included in Contracts with Subcontractors and Suppliers—Commercial Items.

(31) 252.214–7001 Domestic Source Restriction.

(32) 252.225–7009 Preference for Certain Domestic Commodities.

(33) 252.243–7001 Pricing of Adjustments.

(34) 252.247–7203 Transportation of Supplies by Sea.

(b) The contracting officer shall insert the following clauses in Section I of solicitations and contracts awarded under this Subpart as applicable. The prescriptions for the FAR and DFARS clauses other than DFARS part 211 clauses are identified in FAR part 52 and DFARS part 252. The prescriptions for DFARS part 211 clauses are contained in 211.7004–1.

(1) FAR 52.203–5 Covenant Against Contingent Fees.

(2) FAR 52.203–9 Requirement for Certificate of Procurement Integrity—Modification.

(3) FAR 52.203–12 Limitation on Payments to Influence Certain Federal Transactions.

(4) FAR 52.215–1 Examination of Records by Comptroller General.

(5) FAR 52.215–33 Order of Precedence.

(6) FAR 52.216–18 Ordering.

(7) FAR 52.216–19 Delivery Order Limitation.

(8) FAR 52.216–20 Definite Quantity.

(9) FAR 52.216–21 Requirements.

(10) FAR 52.216–22 Indefinite Quantity.

(11) FAR 52.219–6 Notice of Total Small Business Set-Aside.

(12) FAR 52.219–7 Notice of Partial Small Business Set-Aside.

(13) FAR 52.219–9 Small Business and Small Disadvantaged Business Subcontracting Plan.

(14) FAR 52.219–16 Liquidated Damages—Small Business Subcontracting Plan.

(15) FAR 52.220–3 Utilization of Labor Surplus Area Concerns.

(16) FAR 52.220–4 Labor Surplus Area Subcontracting Program.

(17) FAR 52.222–1 Notice to the Government of Labor Disputes.

(18) FAR 52.222–3 Convict Labor.

(19) FAR 52.222–20 Walsh-Healey Public Contracts Act.

(20) FAR 52.222–28 Equal Opportunity Preaward Clearance of Subcontracts.

(21) FAR 52.223–2 Clean Air and Water.

(22) FAR 52.225–10 Duty-Free Entry.

(23) FAR 52.225–11 Certain Communist Areas.

(24) FAR 52.232–17 Interest.

(25) FAR 52.232–28 Electronic Funds Transfer Payment Methods.

(26) FAR 52.242–10 F.o.b. Origin—Government Bills of Lading or Prepaid Postage.

(27) FAR 52.246–17 Warranty of Supplies of a Non-Complex Nature.

(28) FAR 52.246–18 Warranty of Supplies of a Complex Nature.

(29) FAR 52.246–19 Warranty of Systems and Equipment Under Performance Specifications or Design Criteria.

(30) FAR 52.247–1 Commercial Bill of Lading Notations.

(31) FAR 52.247–29 F.o.b. Origin.

(32) FAR 52.247–34 F.o.b. Destination.

(33) 252.205–7000 Release of Information to Cooperative Agreement Holders.

(34) 252.211–7016 Technical Data and Computer Software—Withholding of Payment—Commercial Items.

(35) 252.211–7017 Certification of Technical Data and Computer Software Conformity—Commercial Items.

(36) 252.219–7000 Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts).

(37) 252.219–7001 Notice of Combined Small Business-Labor Surplus Area Set-Aside.

(38) 252.219–7002 Notice of Combined Small Business-Labor Surplus Area Set-Aside—Alternate.

(39) 252.219–7003 Determining the Set-Aside Award Price.

(40) 252.219–7006 Notice of Total Small Disadvantaged Business Set-Aside.

(41) 252.219–7007 Notice of Evaluation Preference for Small Disadvantaged Business (SDB) Concerns.

(42) 252.219–7009 Incentive Program for Subcontracting With Small and Small Disadvantaged Business Concerns, Historically Black Colleges and Universities and Minority Institutions.

(43) 252.219–7010 Notice of Partial Small Business Set-Aside With Preferential Consideration for Small Disadvantaged Business (SDB) Concerns.

(44) 252.219–7011 Determining the Set-Aside Award Price (Preferential Small Disadvantaged Business (SDB) Consideration).

(45) 252.220–7000 Notice of Labor Surplus Area Set-Aside.

(46) 252.220–7001 Notice of Labor Surplus Area Set-Aside—Alternate.

(47) 252.223–7004 Hazardous Material Identification and Material Safety Data.

(48) 252.223–7005 Notice of Radioactive Materials.

(49) 252.225–7001 Buy American Act and Balance of Payments Program.

(50) 252.225–7002 Qualifying Country Sources as Subcontractors.

(51) 252.225–7006 Buy American Act—Trade Agreement Act and the Balance of Payments Program.

(52) 252.225–7010 Domestic Wool Preference.

(53) 252.225–7011 Preference for Domestic Specialty Metals (Major Programs).

(54) 252.225–7012 Preference for Domestic Specialty Metals.

(55) 252.225–7013 Preference for Domestic Hand or Measuring Tools.

(56) 252.225–7015 United States Products Certificate (Military Assistance Program).

(57) 252.225–7016 United States Products (Military Assistance Program).

(58) 252.225–7017 Limitation of Sales Commissions and Fees for Foreign Governments.

(59) 252.225–7019 Exclusionary Policies and Practices of Foreign Governments.

(60) 252.225–7021 Acquisition and Use of Excess and Near-Excess Currency.

(61) 252.225–7023 Restriction on Acquisition of Foreign Machine Tools.

(62) 252.225–7024 Restriction on Acquisition of Foreign Valves.

(63) 252.233–7000 Certification of Request for Adjustment Exceeding $100,000.

(64) 252.242–7000 Submission of Commercial Freight Bill to the General Services Administration for Audit.

(65) 252.247–7204 Notification of Transportation of Supplies by Sea.

(c) The contracting officer shall insert the following representations and certifications in section K of solicitations as applicable. The prescriptions for the following FAR and DFARS representations and certifications other than DFARS part 211 representations and certifications are identified in FAR part 52 and DFARS part 252. The prescriptions for DFARS part 211 representations and certifications are contained in 211.7004–6(a) and 211.7003–2(d).

(1) FAR 52.203–4 Contingent Fee Representation and Agreement.

(2) FAR 52.203–8 Requirement for Certificate of Procurement Integrity.

(3) FAR 52.203–11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.

(4) FAR 52.204–3 Taxpayer Identification.

(5) FAR 52.209–5 Certification Regarding Debarment, Suspension, Proposed Debarment and Other Responsibility Matters.

(6) FAR 52.222–19 Walsh-Healy Public Contracts Act Representation.

(7) FAR 52.222–21 Certification of Nonsegregated Facilities.

(8) FAR 52.222–22 Previous Contracts and Compliance Reports.

(9) FAR 52.222–25 Affirmative Action Compliance.

(10) FAR 52.223–1 Clear Air and Water Certification.

(11) FAR 52.223–5 Certification Regarding A Drug-Free Workplace.

(12) FAR 52.225–12 Notice of Restrictions on Contracting with Sanctioned Persons.

(13) 252.209–7000 Certification or Disclosure of Ownership or Control by a Foreign Government that Supports Terrorism.

(14) 252.211–7012 Certifications—Commercial Items—Competitive Acquisitions.

(15) 252.211–7013 New Material—Commercial Items.

(16) 252.211–7020 Business Type Certification—Commercial Items.

(17) 252.225–7000 Buy American–Balance of Payment Program Certificate.

(18) 252.225–7005 Buy American Act–Trade Agreement Act–Balance of Payments Program Certificate.

(19) 252.247–7202 Representation of Extent of Transportation by Sea.

(d) The contracting officer shall insert the following instructions, conditions or notices in Section L of solicitations as applicable. The prescriptions for the following FAR and DFARS provisions other than FAR 52.215–9, FAR 52.215–12, FAR 52.215–13, FAR 52.215–14, FAR 52.216–1 and DFARS part 211 provisions are identified in FAR part 52 and DFARS part 252. The prescriptions for FAR 52.215–9, FAR 52.215–12, FAR 52.215–13, FAR 52.215–14, FAR 52.216–1 and DFARS part 211 provisions are contained in 211.7004–6(b).

(1) FAR 52.204–4 Contractor Establishment Code.

(2) FAR 52.214–21 Descriptive Literature.

(3) FAR 52.214–23 Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding.

(4) FAR 52.214–25 Step Two of Two-Step Sealed Bidding.

(5) FAR 52.214–33 Late Submissions, Modifications and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (Overseas).

(6) FAR 52.215–8 Acknowledgment of Amendments to Solicitations.

(7) FAR 52.215–9 Submissions of Offers.

(8) FAR 52.215–12 Restriction on Disclosure and Use of Data.

(9) FAR 52.215–13 Preparation of Offers.

(10) FAR 52.215–14 Explanation to Prospective Offerors.

(11) FAR 52.216–1 Type of Contract.

(12) FAR 52.222–24 Preaward On-Site Equal Opportunity Compliance Review.

(13) 252.211–7007 Telegraphic Submission of Offers—Commercial Items.

(14) 252.211–7008 Facsimile Submission of Offers—Commercial Items.

(15) 252.211–7009 General Solicitation Information and Definitions—Commercial Items.

(16) 252.211–7014 Contract Award—Commercial Items.

(17) 252.211–7018 Late Submissions, Modifications and Withdrawals of Offers—Commercial Items.

(18) 252.211–7019 Late Submissions, Modifications and Withdrawals of Offers—Commercial Items (Overseas).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Sections 252.211–7000 through 252.211–7021 are added to read as follows:

252.211-7000 Termination—Commercial Items.

As prescribed at 211.7005(a), insert the following clause:

Termination—Commercial Items (May 1991)

(a) The Government may terminate all or any part of this contract, at any time and for any reason, by giving written or electronic notice to contractor. The termination notice shall specify whether termination is for the convenience of the Government or default by the contractor and shall specify the effective date and time for such termination. Immediately upon receipt of the termination notice, the contractor shall take all reasonable actions to minimize the costs of the termination, including notifying its subcontractors and suppliers to take all reasonable actions. Upon termination, the contractor shall stop all work on the terminated portion of the contract and shall immediately cause its suppliers or subcontractors to cease such work.

(b) Termination for Convenience of the Government. If this contract is terminated for the convenience of the Government:

(1) The contractor shall submit its final termination settlement proposal within 90 days following receipt of the termination notice, unless extended in writing by the contracting officer upon written request of the contractor within such 90 day period.

(2) The contracting officer shall have the unilateral right to determine the amount payable, if any, under this clause if the contractor fails to submit a timely termination settlement proposal or make a timely written request for extension of the time to submit the proposal as required by paragraph (b)(1) of this clause. The contractor shall have no right of appeal regarding the contracting officer's unilateral determination if the contractor has failed to submit a timely termination settlement proposal and has failed to make a timely request for an extension of the time for proposal submission.

(3) Notwithstanding any other provision of this contract, the Government shall have the right to audit and examine all books, records, facilities, work, material, inventories and other items relating to the termination proposal.

(4) The Government shall pay:

(i) The reasonable, allowable and allocable costs, determined in accordance with FAR part 31, incurred by the contractor, its subcontractors and suppliers prior to the date of termination for completed work that has not previously been paid for; for work in process and materials directly related to the terminated portion of the contract, excluding the cost of any work in process or materials that can be used by, canceled or sold without cost to the contractor, its subcontractors, or suppliers; for orderly phase out of performance if requested by the Government; and, for preparation and settlement of the contractor's, its subcontractor's and supplier's termination claims; and,

(ii) A reasonable profit on the terminated portion of the work.

(5) In no event shall the sum of the termination amounts payable and any amounts paid for items delivered under the contract exceed the total contract price.

(6) The contracting officer shall deduct the amount of any claim which the Government has against the contractor under this contract from any amount due the contractor under this clause.

(7) The Government will make no payment for:

(i) Any undelivered items which are in the contractor's, a subcontractor's or a supplier's standard stock or which are readily marketable;

(ii) finished goods, work in process or raw materials fabricated or procured by the contractor in excess of the amounts reasonably required for this contract;

(iii) except as provided in paragraph (b)(4) of this clause, any costs which would not have been charged had the contract not been terminated; or

(iv) claims by the contractor, its subcontractors or suppliers for any loss of anticipated profit, unabsorbed overhead, facilities rearrangement costs or rental, incident to the termination action.

(v) An amount which exceeds the product of the unit price of the terminated units multiplied by the number of units in process under this contract at the time of termination.

(8) Except for a unilateral determination under paragraph (b)(2) of this clause, if the contracting officer and the contractor fail to agree on the whole amount to be paid because of the termination of work, the contracting officer shall make a final decision regarding the amount payable under paragraphs (b) (4) through (6) of this clause and shall pay the contractor such amount. Notwithstanding the contractor's acceptance of such payment, the contractor shall have the right to appeal the contracting officer's final decision under the Disputes clause of this contract, unless the contractor has no right of appeal as provided in paragraph (b)(2) of this clause.

(9) The contractor shall protect, preserve and store, as necessary, all completed items, work in process and materials paid for by the Government as part of a termination for convenience settlement under this clause, including settlement amounts unilaterally determined by the contracting officer, pending disposition instructions from the contracting officer The parties shall negotiate an amount for the costs, if any, for such protection, preservation and storage. Failure to agree on an amount shall be a dispute under the disputes clause of this contract.

(c) *Termination for Default.* (1) Except as provided in paragraph (c)(2) of this clause, the Government may terminate this contract or any part thereof, for default if the contractor:

(i) Repudiates or breaches any of the terms of this contract, including the contractor's warranties;

(ii) Fails to deliver items at the times and places required by the contract;

(iii) Fails to deliver items which conform to contractual requirements;

(iv) Fails to make progress so as to endanger timely delivery of items or proper completion of the contract; or,

(v) Fails to provide the Government reasonable assurances of future performance.

(2)(i) Neither party shall be liable for default caused by any occurrence beyond the reasonable control of the party and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers.

(ii) If the failure to perform is caused by the default of a subcontractor or supplier at any tier, and if the cause of the default is beyond the control of both the contractor and the subcontractor/supplier, and without the fault or negligence of the contractor and its subcontractors and suppliers, the contractor shall not be liable for any excess costs for failure to perform, unless the items were obtainable from other sources in sufficient time for the contractor to meet the required delivery schedule.

(3) The Government shall provide the contractor written or electronic notice of its intent to terminate the contract for default and the specific reason therefor. If the contractor does not cure the failure within 10 days following receipt of the notice, or such longer period as may be authorized in writing by the contracting officer, the Government may terminate the contract in whole or in part. The termination shall be by written notice and shall specify the effective date and time of the termination. The contractor shall continue the work not terminated. The Government shall have no liability to the contractor incident to such termination. The contractor shall be liable to the Government for any and all damages including any costs to procure items similar to those terminated which are in excess of the costs for the terminated portion of the contract.

(4) If, after termination, it is determined that the contractor was not in default, or that the default was excusable as provided in paragraph (c)(2) of this clause, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(5) The Government shall pay for any items delivered by the contractor and accepted by the Government for which payment has not been made.

(d) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of Clause)

252.211-7001 Invoice and Payment—Commercial Items.

As prescribed at 211.7005(a), insert the following clause:

Invoice and Prompt Payment—Commercial Items (May 1991)

(a) *Payments.* (1) Payment shall be made only for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) The Government shall pay for accepted and delivered items no later than the 30th day following receipt of a proper invoice for such items.

(3) The contracting officer, at his or her discretion and notwithstanding any other provision of this contract, may adjust any payment owed to the contractor for accepted

items delivered under this contract if the contracting officer determines that previously accepted items, for which payment had been made, did not conform to the requirements of the contract or were not in the quantity or quantities stated on any prior invoice. The amount of the contracting officer's adjustment shall not exceed an amount necessary to assure that the total payments to the contractor under the contract do not exceed the amounts payable for conforming items. If the payment in question is the final payment under the contract, the contractor agrees to promptly refund the amount necessary to correct the discrepancy between the total amount payable for conforming items and the amount actually paid by the Government.

(b) *Interest penalty for late Government payments.* (1) An interest penalty will be paid to the contractor if the Government does not make payment on or before the 30th day following receipt of a proper invoice. Interest shall accrue on a daily basis beginning the 31st day following receipt of a proper invoice and ending on the date payment is made. The date payment is made shall be the date appearing on the payment check or the date an electronic funds transfer is made. The amount of interest shall be computed using the rate of interest established by the Secretary of the Treasury (published in the **Federal Register** semiannually) for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), that is in effect on the day the penalty begins.

(2) The interest penalty shall be applied only to the portion of the invoice amount approved for payment by the Government and shall be compounded in 30 day increments. Interest accrued and not paid during any 30 day period to which the interest penalty applies (the 31st through 60th, 61st through 90th, etc. day periods following receipt of a proper invoice) shall be added to the amount approved for payment and the adjusted amount shall earn interest until payment is made by the Government.

(3) The following periods of time will not be included in the determination of an interest penalty:

(i) The period taken to notify the contractor of defects in invoices submitted to the Government, but this may not exceed 7 days.

(ii) The period between the defects notice and resubmission of the corrected invoice by the contractor.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at FAR 52.233–1, Disputes, or for more than 1 year. Interest penalties of less than $1.00 need not be paid.

(iv) interst penalties are not required on payment delays due to disagreement between the Government and contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable will be resolved in accordance with the clause at FAR 52.233–1, Disputes.

(4) An interest penalty shall also be paid automatically by the designated payment office, without request from the contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the contractor is paid.

(5) A penalty amount, calculated in accordance with regulations issued by the Office of Management and Budget, shall be paid in addition to the interest penalty amount if the contractor—

(i) Is owed an interest penalty;

(ii) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(iii) Makes a written demand, not later than 40 days after the date the invoice amount is paid, that the agency pay such a penalty.

(6) For the sole purpose of determining the date upon which entitlement to an interest penalty payment for late payment by the Government begins, the date of receipt of a proper invoice shall be:

(i) If the designated billing office fails to notify the contractor of a defective invoice within the period prescribed in subparagraph (c)(4) of this clause, the date of the corrected invoice shall be adjusted by subtracting from the date of the corrected invoice the number of days taken to provide such notification which are in excess of the number of days prescribed in subparagraph (c)(4); (i.e., 7 day notification period, 10 days taken to notify the contractor, corrected invoice date of July 1, the date of submission of a proper invoice shall be June 28).

(ii) If the Government fails to accept or reject items within a 7 day period following tender for acceptance, the Government shall be considered to have received a proper invoice from the contractor on the 7th day following the date items were tendered for acceptance; provided that such items were properly tendered in accordance with the terms of the contract clause entitled, Inspection and Acceptance—Commercial Items. This constructive receipt of an invoice shall not obligate the Government to accept the items, perform contract administration functions, or make payment for the items.

(7) Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the contractor.

(c) *Invoices.* (1) Acceptance and delivery at contractor's facility. The contractor may invoice for payment upon the Government's execution of a completed DD Form 250, Material Inspection and Receiving Report, by an authorized Government official or upon receipt of any other documentation authorized in the contract to signify Government acceptance of the items.

(2) Acceptance at contractor's facility, delivery at other sites.

The contractor may submit an invoice for items accepted at the contractor's facility that are required to be delivered to another site or sites specified in the contract:

(i) Upon receipt at the other site or sites if the contractor is contractually responsible for physically transporting the items to such sites; or,

(ii) Upon execution of the DD Form 250 or other documentation signifying acceptance of the items at the contractor's facility by an authorized Government official if the Government is responsible for physically transporting the items to such sites.

(3) Delivery to sites other than the contractor's facility for acceptance.

The contractor may invoice for items delivered to a site or sites other than the contractor's facility for acceptance at that site or sites upon execution by an authorized Government official of a DD Form 250, or such other documentation as may be authorized in the contract, signifying that the delivered items have been accepted by the Government.

(4) The contractor shall submit an original invoice and three copies to the address designated in the contract to receive invoices. A proper invoice must include: (i) Name and address of the contractor; (ii) invoice date; (iii) contract number, contract line item number and, if applicable, the order number; (iv) description, quantity, unit of measure, unit price and extended price of the items delivered; (v) shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on Government bill of lading; (vi) terms of any prompt payment discount offered; (vii) name and address of official to whom payment is to be sent; and, (viii) name, title, phone number of person to be notified in event of defective invoice. If the invoice does not comply with these requirements, the contractor will be notified of the defect within 7 days after receipt of the invoice at the designated office.

(d) *Discounts for prompt payment.* (1) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

(2) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

(End of Clause)

252.211–7002 Changes—Commercial Items.

As prescribed at 211.7005(a), insert the following clause:

Changes—Commercial Items (May 1991)

(a) Neither party to this contract may change the contract specifications, without the written consent of the other. The contractor may submit a proposal for specification changes to the contracting officer, or the Government may request the contractor to submit such a proposal in the format specified by the contracting officer.

(b) *Unilateral changes.* (1) The contracting officer may make changes at any time, by written order, within the general scope of this contract in the method of shipment.

packaging and packing or place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, delivery of items ordered under this contract, the contracting officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract accordingly.

(2) The contractor must assert its right to an equitable adjustment within 30 days, or such other longer period as may be specified by the contracting officer, after receipt of a written change order under paragraph (b)(1) of this clause, by submitting to the contracting officer a proposal containing sufficient, detailed information to permit the contracting officer to negotiate an equitable adjustment to the price and other terms of the contract affected by the change order.

(c) *Bilateral changes.* Specification changes may be made only within the general scope of this contract and by the written agreement of the parties. The contracting officer and the contractor shall promptly negotiate the scope and equitable adjustment, if any, to the contract price, delivery schedule or both, prior to commencement of work on each change. If the Government's interests demand that performance begin immediately and negotiation of a definitive price is not possible in sufficient time to meet the Government's requirement, the contractor agrees to promptly negotiate a maximum price for the change. If the Government decides to proceed with a maximum priced change, the contractor agrees: (i) to immediately commence work on the change as ordered; (ii) to submit a proposal for establishing the definitive price for the change no later than the time specified by the contracting officer; and, (iii) that the definitive price for the change shall not exceed the agreed upon maximum price.

(d) If any change under this contract will result in a price adjustment involving aggregate increases and/or decreases in costs, plus applicable profits, of more than $500,000, the contractor shall submit cost and pricing data in support of its proposal and to execute the certificate of current cost and pricing data at FAR 15.804–4 prior to execution of the contract modification establishing the definitive price adjustment, unless the price is exempt from the requirement to submit certified cost or pricing data in accordance with FAR 15.804–3.

(e) Nothing in this clause shall excuse the contractor from proceeding with the contract as changed.

(End of Clause)

252.211–7003 Patent and Copyright Indemnification—Commercial Items.

As prescribed at 211.7005(a), insert the following clause:

Patent and Copyright Indemnification—Commercial Items (May 1991)

The contractor shall indemnify the Government, against all claims and proceedings for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright arising under this contract, and the contractor shall hold the Government harmless from any resulting liabilities and losses, provided the contractor is reasonably notified of such claims and proceedings. The contractor's obligation shall not apply to any infringement arising from the use or sale of the items in combination with items not delivered by the contractor if such infringement would not have occurred from the use or sale of such items solely for the purpose for which they were designed or sold to the Government.

(End of Clause)

252.211–7004 Inspection and Acceptance—Commercial Items.

As prescribed at 211.7005(a), insert the following clause:

Inspection and Acceptance—Commercial Items (May 1991)

(a) *Contractor inspection and test responsibilities.* (1) The contractor shall maintain testing, inspection and quality assurance systems sufficient to assure that the items to be furnished under this contract shall conform with all contractual requirements. To the extent practicable, the testing, inspection and quality assurance systems shall be consistent with the contractor's standard commercial practices for such items.

(2) The contractor shall provide the contracting officer 5 working days notice of its intent to tender items for acceptance. If the items are not ready for inspection or test at the time specified by the contractor, the contractor shall reimburse the Government for any costs incurred by the Government as a result of the contractor's failure to have the items available for test and inspection.

(3) The contractor shall tender to the Government for acceptance only items that have been inspected in accordance with the contractor's inspection system and have been found by the contractor to be in conformity with contract requirements.

(4) If inspection or test will be performed at the contractor's facility or at a supplier's or subcontractor's facility, the contractor shall furnish, and shall require the suppliers or subcontractors to furnish, at no change to the price of this contract, all reasonable facilities and assistance for the safe and convenient performance of all inspections and tests.

(b) *Government inspection and test.* (1) The Government has the right to inspect and test all items called for by the contract when such items have been tendered for acceptance. Government inspection and/or testing shall be performed as soon as practicable following tender for acceptance. The Government assumes no contractual obligation to perform any inspection or test for the benefit of the contractor unless specifically set forth elsewhere in this contract.

(2) Except as otherwise provided in the contract, the Government shall bear the expense of Government inspections or tests made at other than the contractor's or its suppliers' or subcontractors' facilities.

(3) The Government shall not be liable for any reduction in the value of any items, including test samples, resulting from inspection or test.

(c) *Acceptance of conforming items.* (1) The Government shall accept conforming items as soon as practicable following tender for acceptance, unless otherwise provided in the contract. Government failure to accept or reject the items shall not relieve the contractor from responsibility, nor impose liability on the Government, for nonconforming items.

(2) Acceptance shall be conclusive, except for patent defects, latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(d) Rejection, Replacement or Correction of Nonconforming Items.

(1) Items are nonconforming when they are defective in material or workmanship, fail to comply with contractual performance requirements or are otherwise not in conformity with contract requirements.

(2) The Government, at its sole election and as promptly as practicable after tender for acceptance, may:

(i) reject nonconforming items, or a nonconforming lot of items, based upon the acceptance criteria contained in the contract, with or without disposition instructions;

(ii) require the correction or replacement of nonconforming items;

(iii) Conditionally accept nonconforming items (see paragraph (e) of this clause); or,

(iv) Require an equitable reduction in the price of the contract in lieu of correction or replacement of nonconforming items.

(3) The contracting officer shall promptly notify the contractor of the Government's election regarding the nonconforming items and the contractor shall promptly remove all items rejected or required to be corrected or replaced. The contracting officer may require or permit correction or replacement in place.

(4) The contractor shall replace or correct nonconforming items within 10 days (or such longer period as may be authorized in writing by the contracting officer) following receipt of the contracting officer's notification.

(5) If the contractor fails to promptly remove rejected items that are required to be removed or fails to replace or correct the nonconforming items within 10 days or such other period specified by the contracting officer, the Government may: (i) remove, replace, or have the items corrected, either by itself or a third party, and charge the costs of removal, replacement or correction to the contractor; or, (ii) terminate the contract for default.

(6) All corrections or replacements of nonconforming items shall be accomplished by the contractor at no change to the contract price including, but not limited to, all costs to make such corrected or replaced items ready for inspection, test and acceptance by the Government and all transportation costs from the original place of acceptance to the contractor's facility and return to the original place or such other place for acceptance as may be permitted by the contracting officer, when those places are not the contractor's facility.

(7) Corrected or replaced items shall be tendered for acceptance at the place stipulated in the contract, or at such other place permitted by the contracting officer, in accordance with a reasonable delivery schedule as may be agreed upon between the contractor and the contracting officer. The

contracting officer may require a reduction in contract price if the contractor fails to meet such delivery schedule.

(e) Acceptance under Special Conditions. The contracting officer reserves the right to require the contractor to deliver nonconforming items prior to their correction. Such items shall be conditionally accepted by the Government and subsequently re-tendered by the contractor for final acceptance following correction of the nonconformity. The contractor and the contracting officer shall negotiate an amount to be withheld from the price of items conditionally accepted pending their correction. The amount negotiated shall represent equitably the value of such correction and such amount shall be returned to the contractor upon correction of the nonconforming items. The Government shall be responsible for all risks of loss or damage to such items while they are in the Government's possession. Risk of loss shall remain with the Government until the conditionally accepted items are returned to the contractor for correction. The Government shall be responsible for all transportation costs associated with return of the conditionally accepted items to the contractor. The contractor shall be responsible for the correction of the nonconformities identified at the time of conditional acceptance, correction of any other nonconformities prior to final acceptance and for any costs associated with the return of corrected items to the Government. The schedule for such correction and return shall be negotiated between the contractor and the contracting officer.

(End of Clause)

252.211-7005 Limitation of Liability—Commercial Items.

As prescribed at 211.7005(a), insert the following clause:

Limitation of Liability—Commercial Items (May 1991)

The contractor shall indemnify and hold harmless the Government, its agents, consignees, employees and representatives from and against all expenses, losses, claims, demands, or causes of action of whatever kind; —including negligence, breach of express or implied warranty, failure to warn, or strict liability, and from and against all special, indirect, incidental, or consequential damages, including lost profits, of every kind whatsoever arising out of, by reason of, or in any way connected with, accidents, occurrences, injuries or losses to or of any person or property, including the Government or the Government's property, which may occur before or after acceptance of the completed items by the Government, in any way due or resulting from in whole or in part, the design, preparation, manufacture, construction, completion, warning, or failure to warn, delivery or non-delivery of items, including such as are caused by any subcontractor or supplier of the contractor.

The contractor shall pay for or reimburse the Government for all costs and expenses, including attorney's fees, arising out of any suit or claim relating to any risk described in the first paragraph of this clause.

(End of Clause)

252.211-7006 Title and Risk of Loss—Commercial Items.

As prescribed at 211.7005(a), insert the following clause:

Title and Risk of Loss—Commercial Items (May 1991)

(a) Title to items furnished under this contract, except for commercial computer software, shall pass to the Government upon final acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title. Title to commercial computer software shall remain with the contractor.

(b) Unless the contract specifically provides otherwise, risk of loss or damage to items shall remain with the contractor until, and shall pass to the Government upon—

(1) Delivery of the items to a carrier, if transportation is f.o.b. origin; or

(2) Acceptance by the Government or delivery of the items to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

(c) Paragraph (b) above shall not apply to items that so fail to conform to contract requirements as to give a right of rejection. Except as provided in paragraph (e) of the clause at 252.211-7004, Inspection and Acceptance—Commercial Items, the risk of loss of or damage to such nonconforming items remains with the contractor until cure or acceptance. After cure or acceptance, paragraph (b) of this clause shall apply.

(d) Under paragraph (b) above, the contractor shall not be liable for loss of or damage to items caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

(End of clause)

252.211-7007 Telegraphic Submission of Offers—Commercial Items.

As prescribed at 211.7004-6(b)(5), insert the following provision:

Telegraphic Submission of Offers—Commercial Items (May 1991)

(a) *Definition—Telegraphic offer* means an offer, modification of an offer, or withdrawal of an offer that is delivered to the Government by telegram or mailgram; or, if a telex number has been provided in paragraph (g) of this provision, transmitted to the Government by telex.

(b) Telegraphic offers may be submitted in response to this solicitation. Such offers must be received at the place, and prior to the time, specified in the solicitation for the submission of offers.

(c) Telegraphic offers shall refer to this solicitation and include the items or sub-items, quantities, unit prices, time and place of delivery, and all representations and other information required by this solicitation. Offers in response to an invitation for bids shall include a statement of agreement with all the terms, conditions, and provisions of the solicitation. Offers in response to a request for proposals shall include a statement specifying the extent of agreement with all the terms, conditions, and provisions of the solicitations.

(d) Telegraphic offers that fail to furnish required representations or information, or that reject any of the terms, conditions and provisions of the solicitation, may be excluded from consideration.

(e) Offerors must submit a complete, signed, original offer in confirmation of their telegraphic offer within five (5) working days from the time specified in the solicitation for receipt of offers. Failure to submit the complete, signed, original offer within the time specified may render a bid submitted in response to an invitation for bids non-responsive and ineligible for award and may render a proposal submitted in response to a request for proposals ineligible for award. An offeror's failure to cure that deficiency within the time specified by the contracting officer shall render a bid submitted in response to an invitation for bids non-responsive and ineligible for award and shall render a proposal submitted in response to a request for proposals ineligible for award.

(f) The Government shall not be responsible for any deficiencies in telegraphic offers including, but not limited to, the following:

(1) Receipt of illegible, garbled, or incomplete offers.

(2) Availability of the Government's telex equipment.

(3) Incompatibility between the sending and receiving equipment.

(4) Delay in transmission or receipt of the offer.

(5) Failure of the offeror to properly identify the offer.

(g) The Government's telex number is _____.

(h) The Government shall not be responsible for physical security of a telegraphic offer prior to receipt of the offer.

(End of provision)

252.211-7008 Facsimile Submission of Offers—Commercial Items.

As prescribed at 211.7004-6(b)(6), insert the following provision:

Facsimile Submission of Offers—Commercial Item (May 1991)

(a) Definition. "Facsimile offer" means an offer, modification of an offer, or withdrawal of an offer that is transmitted to and received by the Government via electronic equipment that communicates and reproduces both printed and handwritten material.

(b) Facsimile offers may be submitted in response to this solicitation. Facsimile offers must be received at the place, and prior to the time, specified in the solicitation for the submission of offers.

(c) Facsimile offers that fail to furnish required representations or information, or reject any of the terms conditions and provisions of the solicitation, may be excluded from consideration.

(d) Facsimile offers must contain the required signatures. The offeror agrees that its facsimile signature has the same force and effect as a handwritten signature on an original document and fully signifies its intent

to contract in accordance with the facsimile offer.

(e) The Government reserves the right, at its sole discretion, to accept an offer and enter into a contract solely on the basis of the facsimile offer. The Government also reserves the right to require the offeror to submit, prior to the Government's acceptance of the offer, an original, signed solicitation cover sheet. The offeror agrees to provide the original, signed, solicitation cover sheet to the contracting officer within 5 working days following the Government's request.

(f) The offeror's failure to sign a facsimile offer or to make timely submission of the original, signed, solicitation cover sheet in accordance with paragraph (e) of this provision may render a bid submitted in response to an invitation for bids non-responsive and ineligible for award and may render a proposal submitted in response to a request for proposals ineligible for award. An offeror's failure to cure that deficiency within the time specified by the contracting officer shall render a bid submitted in response to an invitation for bids non-responsive and ineligible for award and shall render a proposal submitted in response to a request for proposals ineligible for award.

(g) The Government shall not be responsible for any deficiencies in facsimile offers including, but not limited to, the following:

(1) Receipt of illegible, garbled, or incomplete offers.

(2) Availability of the receiving electronic equipment.

(3) Incompatibility between the sending and receiving equipment.

(4) Delay in transmission or receipt of the offer.

(5) Failure of the offeror to properly identify the offer.

(h) The Government's facsimile compatibility characteristics are as follows:

(1) Telephone number of receiving equipment: _____

(2) Compatibility characteristics. (e.g., make and model number, receiving speed, communications protocol):

_____

_____

_____

(i) The Government shall not be responsible for physical security of a facsimile offer prior to receipt of the offer.

(End of provision)

252.211-7009 General Solicitation Information and Definitions—Commercial Items.

As prescribed at 211.7004-6(b)(2), insert the following provision:

General Solicitation Information and Definitions—Commercial Items (May 1991)

(a) *General solicitation information.* If this solicitation has been made using Standard Form 33 the reference to solicitation provisions at FAR 52.214-7, Late Submissions, Modifications, and Withdrawals of Bids, and FAR 52.215-10, Late Submissions, Modifications, and Withdrawals of Proposals, means the solicitation provision at 252.211-7018, Late Submissions, Modifications and Withdrawals of Offers—Commercial Items, and reference to the clause at FAR 52.232-8, Discounts for Prompt Payment, means paragraph (d) of the clause at 252.211-7001, Invoice and Payment—Commercial Items.

(b) *Definitions*

(1) "Contracting officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

(2) "Offer" means either "bid" in sealed bidding or "proposal" in other than sealed bidding.

(3) "Solicitation" means an invitation for bids in sealed bidding or a request for proposal in other than sealed bidding.

(End of Provision)

252.211-7010 Price Reduction for Defective Cost or Pricing Data—Contract Modifications—Commercial Items.

As prescribed at 211.7005(a), insert the following clause:

Price Reduction for Defective Cost or Pricing Data—Contract Modifications—Commercial Items (May 1991)

(a) This clause is applicable only to contract modifications involving aggregate increases and/or decreases in costs, plus applicable profits, of more than $500,000, except that it does not apply to any modification for which the price is:

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or,

(3) Set by law or regulation.

(b) If the amount of any price adjustment, either a price increase or decrease, negotiated for any modification to this contract was based upon defective data, because (1) the contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the contractor cost or pricing data that were not complete, accurate, and current as certified in the contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data that were not accurate, complete and current, the contract price shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective cost or pricing data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which the actual subcontract, or the actual cost to the contractor if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(End of clause)

252.211-7011 Audit of Contract Modifications—Commercial Items.

As prescribed at 211.7005(a), insert the following clause:

Audit of Contract Modifications—Commercial Items (May 1991)

(a) If the contractor has submitted cost or pricing data in connection with the pricing of any modification to this contract, the contracting officer or a representative who is an employee of the Government shall have the right to examine and audit all books, record, documents, and other data of the contractor (including computations and projections) related to negotiating, pricing or performing the modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The Comptroller General of the United States or a representative who is an employee of the Government shall have the same rights.

(b) The contractor shall make available at its office at all reasonable times the materials described in paragraph (a) above, for examination, audit, or reproduction, until 3 years after final payment under this contract. Except that records pertaining to appeals, litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(c) The contractor shall insert a clause containing all the provisions of this clause, including this paragraph (c), in all subcontracts over $500,000 under this contract, altering the clause only as necessary to identify properly the contracting parties and the contracting office under the Government prime contract.

(End of clause)

252.211-7012 Certifications—Commercial Items—Competitive Acquisitions.

As prescribed at 211.7004-6(a)(2), insert the following provision:

Certifications—Commercial Items—Competitive Acquisitions (May 1991)

(a)(1) This is a solicitation for commercial items as defined in paragraph (b) of this clause. Offers received in response to this solicitation that do not offer commercial items shall not be considered for award.

(2) If an offer containing the following certifications results in a contract award, the certifications shall form a material part of the contract whether or not physically attached to the contract.

(b) *Definitions:* As used in this certification:

(1) *Commercial items* means items regularly used in the course of normal business operations for other than Government purposes which:

(i) Have been sold or licensed to the general public;

(ii) Have not been sold or licensed, but have been offered for sale or license to the general public;

(iii) Are not yet available in the commercial marketplace, but will be available for commercial delivery in a reasonable period of time;

(iv) Are described in paragraphs (i), (ii) or (iii) that would require only minor modification in order to meet the requirements of the procuring agency.

(2) "Minor modification" means a modification to a commercial item that does not alter the commercial item's function or essential physical characteristics.

(c) The offerer, _____ (insert name of offeror), hereby certifies that:

(1) The item(s) offered in response to solicitation number _____ (insert solicitation number) is (are):

___ Commercial item(s) as defined in (b)(1)(i).[1]

___ Commercial item(s) as defined in (b)(1)(ii).[1]

___ Commercial item(s) as defined in (b)(1)(iii).[1]

___ Commercial item(s) as defined in (b)(1)(iv).[1]

___ Not a commercial item, but the item(s) offered are, or were, previously furnished to the Government and are being replaced by the commercial items to be acquired under this solicitation.[1]

___ Not a commercial item, but the item(s) offered are minor modifications of items that are, or were, previously furnished to the Government and are being replaced by the commercial items to be acquired under this solicitation.[1]

___ Not a commercial item.[1]

(2) The commercial item(s) offered in response to this solicitation:

(i) ___ will not be produced using Government production and research property (see FAR 45.301).

(i) ___ will be produced using Government production and research property (see FAR 45.301) identified below:

Government production and research property	Use authorized under contract number	Cognizant contracting officer or contracting activity

(End of Certification)

(d) Failure to complete the certifications required in paragraph (c) of this clause shall render an offer submitted in response to an invitation for bids non-responsive and ineligible for award and shall render a proposal ineligible for award.

(End of Provision)

Alternate I (May 1991)

As prescribed at 211.7003–2(d), substitute the following for paragraph (a)(1) of the basic provision:

(a)(1) This is a solicitation for commercial items as defined in paragraph (b) of this clause. Offers received in response to this solicitation that do not offer commercial items shall not be considered for award unless the offeror has certified that the item(s) offered in response to this solicitation are or were previously furnished to the Government and are being replaced by the commercial items to be acquired under this solicitation.

252.211–7013 New Material—Commercial Items.

As prescribed at 211.7004–6(a)(2), insert the following provision:

New Material—Commercial Items (May 1991)

The offeror represents that, unless this solicitation specifies otherwise, the items to be furnished under this contract are new and are not of such age or so deteriorated as to impair their usefulness or safety. If the offeror believes that furnishing used or reconditioned items or components thereof will be in the Government's interest, the offeror shall so notify the contracting officer in writing. The offeror's notice shall include the reasons for the request along with a proposal for any consideration to the Government if the contracting officer authorizes the use of used or reconditioned items or components.

(End of Provision)

252.211–7014 Contract Award—Commercial Items.

As prescribed at 211.7004–6(b)(2), insert the following provision:

Contract Award—Commercial Items (May 1991)

(a) The Government will evaluate offers in response to invitations for bid without discussions and will award a contract to the responsible offeror whose offer, conforming to the solicitation, will be most advantageous to the Government considering only price and the price related factors specified in the solicitation.

(b) The Government will award a contract resulting from a request for proposals to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors specified in the solicitation, considered. The Government intends to award a contract on the basis of initial offers received in Response to a request for proposals without discussions unless discussions are necessary. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint.

(c) The Government may: (1) Reject any or all offers if such action is in the public interest; (2) accept other than the lowest offer; and, (3) waive informalities and minor irregularities in offers received.

(d) The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(e) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer or any extension thereof shall result in a binding contract without further action by either party unless the offer was withdrawn: (i) prior to the date for bid opening if the offer was submitted in response to an invitation for bid; or, (ii) prior to contract award if the offer was submitted in response to a request for proposal.

(End of Provision)

252.211–7015 Technical Data and Computer Software—Commercial Items.

As prescribed at 211.7005(a), insert the following clause:

Technical Data and Computer Software—Commercial Items (May 1991)

(a) *Definitions.* The terms " "*computer software*," "*commercial computer software*," "*computer software documentation*," "*commercial computer software documentation*" and "*technical data*" are used in this clause to establish the conditions under which the contractor shall furnish, and the Government may use, technical data and computer software to be provided under this contract. As used in this clause:

(1) *Computer software* means a set of instructions, rules, routines or statements that cause a computer to perform a specific operation or series of operations; and, source code listing, object codes, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated or recompiled.

(2) *Commercial computer software* means software that has been developed at private expense for the commercial market-place and is not in the public domain. The term "commercial computer software" includes commercial computer software that has been modified or will be modified to satisfy the requirements expressed in the solicitation for this contract.

(3) *Computer software documentation* means owner's manuals, user's manuals, and operating instructions and other items, regardless of storage media, which explain the capabilities of the computer software or provide operating instructions for using the software to obtain desired results from a computer.

(4) *Commercial computer software documentation* means the computer software documentation customarily provided to the public at, or subsequent to, the time the commercial computer software is licensed or provided to the public.

(5) *Technical data* means recorded information, regardless of format or storage media, of a scientific or technical nature. Technical data includes computer software documentation and computer data bases but does not include computer software, financial or administrative data, or cost or pricing data.

(b) Technical Data (other than commercial computer software documentation) and Computer Software (other than commercial computer software).

(1) The Government may use without restrictions and for whatever purpose, technical data and computer software:

[1] Note: Check one or more as appropriate. If more than one box is checked identify the items and quantities within each category.

(i) Customarily provided to the public without restrictions or that are in the public domain; or,

(ii) Purchased by the Government to document the modifications to the contractor's standard commercial item configuration, its related computer software or related computer software documentation if a modified commercial item is being furnished under this contract.

(2) The Government's use of technical data and computer software purchased under this contract, other than the technical data and computer software described in paragraph (b)(1) of this clause, shall be subject to the following restrictions only:

(i) The Government shall not release or disclose the technical data and computer software to other parties without the contractor's permission except for emergency repair or overhaul of the commercial items furnished under this contract or to contractors or subcontractors who are providing support to the Government for this contract or a related contract, require access to the technical data or computer software to provide such support and who sign a non-disclosure statement; and,

(ii) The Government shall not use the technical data and computer software to manufacture additional quantities of the commercial items to be furnished under this contract or, in the case of computer software, to prepare the same or similar computer software.

(3) The Government, including contractors or subcontractors who are providing support to the Government for this contract or a related contract, may use computer software and related documentation purchased under this contract at any other facility to which the software or related documentation may be transferred; use the software and documentation with a backup computer when a primary computer is inoperative; use the software and documentation at multiple facilities, by multiple users or on a local area network; copy the computer software for safekeeping (archive) or backup purposes; and, modify the software and documentation or combine either with other software and documentation provided that the unmodified portions shall remain subject to these restrictions.

(4) The contractor shall not mark any technical data or computer software that is in the public domain; is available to the public without restrictions on its use; or, has been purchased by the Government under this contract in any manner that would restrict the Government's use, in accordance with this clause, of the technical data or computer software.

(c) Commercial Computer Software and Commercial Computer Software Documentation.

(1) The contractor shall furnish commercial computer software or commercial computer software documentation to the Government without restrictions on the use of the software or documentation if the commercial computer software or commercial computer software documentation is customarily provided to the public without restrictions or is in the public domain. The Government shall use such commercial computer software or commercial computer software documentation for any purpose.

(2) Commercial computer software or commercial computer software documentation that is customarily provided to the public under a licensing agreement shall be furnished to the Government under the same licensing agreement that is provided by the licensor to the public or, if a specific license has been negotiated for this contract, the commercial computer software or commercial computer software documentation shall be furnished in accordance with the negotiated license. The Government shall use licensed commercial computer software or licensed commercial computer software documentation in accordance with the terms of the license.

(3) The contractor shall not place any markings on the commercial computer software or commercial computer software documentation that restrict the Government's use of such software or documentation except as provided in the license under which the commercial computer software or commercial computer software documentation shall be furnished to the Government.

(End of Clause)

252.211-7016 Technical Data and Computer Software—Withholding of Payment—Commercial Items.

As prescribed at 211.7004-1(h)(4), insert the following clause:

Technical Data and Computer Software—Withholding of Payment—Commercial Items (May 1991)

(a) This clause applies to technical data and computer software other than commercial computer software documentation and commercial computer software as those terms are defined in the clause at 252.211-7015, Technical Data and Computer Software—Commercial Items, of this contract.

(b) If the technical data or computer software to be delivered under this contract are not delivered within the time(s) specified by this contract or are incomplete, inadequate or otherwise not in conformance with contractual requirements, the contracting officer may withhold payment of 10 percent of the contract price (unless a lesser withholding is specified in paragraph (c)) pending correction of the nonconformity(ies) by the contractor. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the contractor's failure to make timely delivery or to deliver technical data or computer software that conform to contractual requirements arises out of causes beyond the control and without the fault or negligence of the contractor.

(c) The withholding percentage in paragraph (b) of this clause shall be _____ percent.

(d) The withholding of any amount, or subsequent payment to the contractor, shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

252.211-7017 Certification of Technical Data and Computer Software Conformity—Commercial Items.

As prescribed at 211.7004-1(h)(4), insert the following clause:

Certification of Technical Data and Computer Software Conformity—Commercial Items (May 1991)

(a) This clause applies to technical data and computer software other than commercial computer software documentation and commercial computer software as defined in the clause at 252.211-7015, Technical Data and Computer Software—Commercial Items, of this contract.

(b) All technical data and computer software delivered under this contract shall be accompanied by the following written certification:

The contractor, *(name of contractor)*, hereby certifies that, to the best of its knowledge and belief, the technical data or computer software delivered herewith under contract number *(insert contract number)* are complete, accurate, and comply with all requirements of the contract.

Date:

_____

Name and Title of Certifying Official:

_____

(End of Certification)

This written certification shall be dated. The certifying official (identified by name and title) shall be an individual who has been authorized by the contractor to execute a binding certification on behalf of the contractor.

(c) The contractor shall identify, and provide to the contracting officer as soon as practicable following contract award but in no event later than the time of first data submission and certification, by name and title, each individual (official) authorized by the contractor to certify in writing that the technical data and computer software is complete, accurate, and complies with all requirements of the contract. The contractor hereby authorizes direct contact with the authorized individual responsible for certification of technical data and computer software. The authorized individual shall be familiar with the contractor's technical data and computer software conformity procedures and their application to the technical data and computer software to be certified and delivered.

(End of Clause)

252.211-7018 Late Submissions—Modifications and Withdrawals of Offers—Commercial Items.

As prescribed at 211.7004-6(b)(3), insert the following provision:

Late Submissions—Modifications and Withdrawals of Offers—Commercial Items (May 1991)

(a) Any offer received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by registered or certified mail not later than the 5th calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation;

(3) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m., at the place of mailing 2 working days prior to the date specified for receipt of offers. The term "working days" excludes weekends and U.S. Federal holidays; or,

(4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the contracting officer's request for "best and final" offers under other than sealed bidding procedures, is subject to the conditions in subparagraphs (a) (1), (2), and (3) of this provision.

(c) A modification resulting from the contracting officer's request for "best and final" offers under other than sealed bidding procedures received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Government installation.

(d) The only acceptable evidence to establish the date of mailing of a late offer or modification sent either by U.S. or Canadian Postal Service registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer or modification shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by express Mail Next Day Service Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (d) of this provision, excluding the postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the government will be considered at any time it is received and may be accepted.

(h)(1) Offers may be withdrawn by written notice (including signed facsimile copies) or telegram (including mailgram) received: (i) prior to the date for bid opening if the offer was submitted in response to an invitation for bid; or, (ii) at anytime prior to award if the offer was submitted in response to a request for proposal.

(2) Offerors may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and: (1) for offers submitted in response to an invitation for bid, the representative signs a receipt for the offer before award; or, (ii) for other than sealed bidding, the offeror or its representative delivers a written or facsimile notice of withdrawal to the contracting officer.

(End of Clause)

252.211-7019 Late Submissions—Modifications and Withdrawal of Offers—Commercial Items (Overseas).

As prescribed at 211.7004-6(b)(4), insert the following provision:

Late Submissions—Modifications and Withdrawal of Offers—Commercial Items (Overseas)

(a) Any offer received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Government the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or,

(2) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the contracting officer's request for "best and final" offers under other than sealed bidding is subject to the same conditions as in subparagraph (a)(1) of this provision.

(c) A modification resulting from the contracting officer's request for "best and final" offers under other than sealed bidding received after the time and date specified in the request will not be considered unless received before award and the late receipt was due solely to mishandling by the Government after receipt at the installation.

(d) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of the installation on the offer wrapper or other documentary evidence of receipt maintained by the installation.

(e) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(f)(1) Offers may be withdrawn by written notice (including signed facsimile copies) or telegram (including mailgram) received: (i) prior to the date for bid opening if the offer was submitted in response to an invitation for bid; or, (ii) at anytime prior to award if the offer was submitted in response to a request for proposal.

(2) Offers may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and: (i) for offers submitted in response to an invitation for bid, the representative signs a receipt for the offer before award; or, (ii) for other than sealed bidding, the offeror or its representative delivers a written or facsimile notice of withdrawal to the contracting officer.

(End of provision)

252.211-7020 Business Type Certification—Commercial Items.

As prescribed at 211.7004-6(a)(3), insert the following provision:

Business Type Certification—Commercial Items (May 1991)

(a) *Definitions:*

(1) *Handicapped individual* means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

(2) *Public or private organization for the handicapped* means one which: (i) is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; (ii) complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and, (iii) employs in the production of commodities and in the provision of servicers, handicapped individuals for not less than 75 percent of the direct labor required for the production or provision of the commodities or services.

(3) *Small business concern,* as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominate in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR part 121.

(4) *Small disadvantaged business concern,* as used in this provision, means a small business concern, including mass media, owned and controlled by individuals who are both socially and ecomomically disadvantaged, as defined in regulations prescribed by the U.S. Small Business Administration at 13 CFR part 124, the majority of earnings of which directly accrue to such individuals. (13 CFR part 124 generally provides that a small disadvantaged business concern is a small business concern(1) which is at least 51 percent onwed by one or more socially and economically disadvantaged individuals; or in the case of any publicly owned business, at least 51 percent of the voting stock of which is owned by one or more socially and economically disadvantaged individuals, and

(2) whose management and daily business operations are controlled by one or more such individuals.) (See CFR 124.01 through 124.110.)

(5) *Women-owned,* as used in this provision, means a small business that is at least 51 percent owned by a woman or women who is or are U.S. citizens and who also control and operate the business.

(b) *Representations.*—(1) Type of Business Organization. The offeror represents that—

(i) If the offeror is a U.S. entity, it operates as: ____ a corporation incorporated under the laws of the State of _____; ____ an individual; ____ a partnership; ____ a nonprofit organization; or, ____ a joint venture; or,

(ii) If the offeror is a foreign entity, it operates as: ____ a corporation, registered for business in ____ (country); ____ an individual; ____ a partnership; ____ a nonprofit organization; or, ____ a joint venture.

(2) *Small Business Concern Representation.* The offeror represents and certifies as part of its offer that it ____ is, ____ is not a small business concern and that ____ all, ____ not all end items to be furnished will be manufactured or produced by a small business concern in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.

Note: Offerors who have represented that they are not small business concerns are not required to complete the representations and certifications in paragraphs (b)(3) through (b)(7) of this clause.

(3) *Small Disadvantaged Business Concern Representation.* (i) The offeror represents and certifies that it ____ is, ____ is not a small disadvantaged business concern.

(ii) The offeror represents that its ownership falls within at least one of the following categories (check the applicable categories):

____ Subcontinent Asian (Asian-Indian) American (U.S. Citizen with origins from India, Pakistan, Bangladesh, or Sri Lanka);

____ Asian-Pacific American (U.S. Citizen with origins from Japan, China, The Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, Northern Mariana Islands, Laos, Cambodia, or Taiwan);

____ Black American (U.S. Citizens);

____ Hispanic American (U.S. Citizen with origins from South America, Central America, Mexico, Cuba, the Dominican Republic, Puerto Rico, Spain or Portugal);

____ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians);

____ Individual/concern currently certified for participation in the Minority Small Business and Capital Ownership Development Program under section 8(a) of the Small Business Act (15 U.S.C. 637(a)); or,

____ Other (The offeror must complete (3)(iii) below if this block is checked).

(iii) Complete only if item (3)(ii) above checked "Other."

The offeror represents and certifies, as part of its offer, that the Small Business Administration (SBA) ____ has, ____ has not made a determination concerning the offeror's status as a small disadvantaged business concern. If the SBA has made such a determination, the date of the determination was _____ and the offeror certifies that it ____ was, ____ was not found by the SBA to be socially and economically disadvantaged as a result of that determination and that no circumstances have changed to vary that determination.

(4) *Women-Owned Small Business Representation.* The offeror represents and certifies that it ____ is, ____ is not a women-owned small business concern.

(5) *Organization for the Handicapped Representation.* (i) The offeror represents and certifies that it ____ is, ____ is not a public or private organization for the handicapped and agrees that at least 75 percent of the direct labor required in the performance of any resultant contract will be performed by handicapped individuals.

(ii) An offeror certifying in the affirmative in (5)(i) is eligible to participate in any resultant contract as if it were a small business concern.

(6) Subcontracting Limitation.

The offeror represents and certifies that in performance of the contract it ____ will, ____ will not perform work for at least 50 percent of the cost of manufacturing the items, not including the cost of materials.

(7) Complete only if the offer has certified itself to be a small business in one of the categories of this subparagraph:

Offeror's number of employees for the past 12 months or offeror's average annual gross revenue for the last 3 fiscal years. (Check one of the following.)

No. of employees	Average annual gross revenues
____ 50 or fewer	____ $1 million or less.
____ 51–100	____ $1,000,001–$2 million.
____ 101–250	____ $2,000,001–$3.5 million.
____ 251–500	____ $3,500,001–$5 million.
____ 501–750	____ $5,000,001–$10 million.
____ 751–1,000	____ $10,000,001–$17 million.
____ Over 1,000	____ Over $17 million.

(c) *Labor Surplus Area Representation.* (1) Each offeror desiring to be considered as a labor surplus (LSA) concern shall indicate below the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than 50 percent of the contract price. If more than one location is to be used, list each location and the costs to be incurred at each, stated as a percentage of the contract price:

Name of Company:
Street Address:
City/County:
State:

(2) The offeror's status as a labor surplus area concern may affect: (i) entitlement to award in case of tie offers; or, (ii) offer evaluation in accordance with the Buy American Act clause, if included in this solicitation.

(3) Failure to list the location(s) of manufacture or production and the percentage(s) of cost to be incurred at each location will preclude consideration of the offeror as an LSA concern. If the offeror is awarded a contract as a LSA concern and would not have otherwise qualified for the award, the offeror shall perform the contract or cause the contract to be performed in accordance with the obligations of LSA concern.

(End of Certification)

(End of Provision)

252.211-7021 Clauses To Be Included in Contracts with Subcontractors and Suppliers—Commercial Items.

As prescribed at 211.7005(a), insert the following clause:

Clauses To Be Included in Contracts With Subcontractors and Suppliers—Commercial Items (May 1991)

(a) *Definitions.—Subcontractor* means an entity producing an item for another entity to the other entity's specifications, designs or drawings. The term does not include entities that produce such items to their own specifications, designs or drawings for sale to others.

Suppliers means an entity that produces items to its own specifications, designs, or drawings for sale to others.

(b) The contractor shall not include any FAR or DFARS clause in its contracts with its subcontractors and suppliers or require its subcontractors or suppliers to include FAR or DFARS clauses in contracts with lower tier subcontractors or suppliers unless the clause is listed in paragraphs (b)(1) through (b)(3) of this clause, is applicable at the lower tier and is included in the prime contract.

(1) All contracts with subcontractors and suppliers.

The prime contractor shall include the following clauses in all contracts with its subcontractors and suppliers, if the clauses are applicable to such contracts, and shall require its subcontractors and suppliers to include these clauses in lower tier contracts if the clauses are applicable to a particular lower tier contract:

FAR 52.203–12 Limitation on Payments to Influence Certain Federal Transactions.

FAR 52.222–1 Notice to the Government of Labor Disputes.

FAR 52.222–22 Previous Contracts and Compliance Reports.

FAR 52.222–26 Equal Opportunity.

FAR 52.222–35 Affirmative Action for Special Disabled and Vietnam Era Veterans.

FAR 52.222–36 Affirmative Action for Handicapped Workers.

FAR 52.222–37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.

FAR 52.225–12 Notice of Restrictions on Contracting with Sanctioned Persons.

FAR 52.225–13 Restrictions on Contracting with Sanctioned Persons.

252.223–7005 Notice of Radioactive Materials.

252.225–7001 Buy American Act and Balance of Payment Program.

252.225–7006 Buy American Act-Trade Agreement Act and the Balance of Payments Program.

252.225–7015 United States Products Certificate (Military Assistance Program).

252.225–7016 United States Products (Military Assistance Program).

(2) Only contracts with subcontractors.

The prime contractor shall include the following clauses in all contracts with its subcontractors, if the clauses are applicable to such contracts, and shall require its subcontractors to include these clauses in lower tier subcontracts when the clauses are applicable to a particular lower tier contract:

FAR 52.220–4 Labor Surplus Area Subcontracting Program.

FAR 52.222–25 Affirmative Action Compliance.

FAR 52.223–1 Clear Air and Water Certification.

FAR 52.223–2 Clean Air and Water.

FAR 52.225–10 Duty-Free Entry.

FAR 52.225–11 Certain Communist Areas.

FAR 52.222–21 Certification of Nonsegregated Facilities.

252.211–7011 Audit of Contract Modifications—Commercial Items.

252.247–7203 Transportation of Supplies by Sea.

(3) Only contracts with first tier subcontractors.

The prime contractor shall include the following clauses only in its first tier subcontracts if the clauses are applicable to a particular first tier subcontract:

FAR 52.209–6 Protecting Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.

FAR 52.215–1 Examination of Records by Comptroller General.

FAR 52.219–8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.

FAR 52.219–9 Small Business and Small Disadvantaged Business Subcontracting Plan.

252.203–7001 Special Prohibition on Employment.

252.219–7000 Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts).

(End of Clause)

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Tuesday
April 23, 1991

Part III

Department of Agriculture

Office of the Secretary

7 CFR Part 12

Highly Erodible Land and Wetland Conservation; Final Rule

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 12

Highly Erodible Land and Wetland Conservation

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This final rule sets out revisions to the highly erodible land and wetland conservation provisions of part 12 in order to implement amendments to title XII of the Food Security Act of 1985 enacted by the Food, Agriculture, Conservation, and Trade Act of 1990.

EFFECTIVE DATE: The provisions of this rule are effective as of November 28, 1990, and as otherwise stated in the regulations.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra J. Nelson, Deputy Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013, telephone (202) 447-3463. Request for copies of the regulatory impact analysis, the environmental assessment, and the finding of no significant impact, as described below, may be sent to this office.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under United States Department of Agriculture (the "Department" or "USDA") procedures established in accordance with provisions of Departmental Regulation 1512-1 and Executive Order 12291 and has been classified as "major." During promulgation of the current provisions of part 12 in 1987, a similar review was conducted and it was determined that the current regulations will have an annual effect on the economy of $100 million or more. At that time, a regulatory impact analysis was prepared for the current regulations. A review of the previously prepared regulatory impact analysis was conducted and an updated analysis was prepared for this rule. Copies of the updated regulatory impact analysis of this final rule are available upon request from the previously mentioned contact.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for emergency review under the Paperwork Reduction Act of 1980 and have been granted emergency clearance. That clearance will expire on May 31, 1991. ASCS will request OMB to extend approval for information collection for three years. The paperwork requirements which would be imposed by this final rule entail minor revisions of the paperwork requirements under the current regulations. Public reporting burden for these collections is estimated to vary from 5 to 15 minutes per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The titles and numbers of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051; Cotton Production Stabilization—10.052, Emergency Conservation Program—10.054; Emergency Loans—10.404; Farm Operating Loans—10.406; Farm Ownership Loans—10.407; Feed Grain Production Stabilization—10.055; Storage Facilities Equipment Loans—10.056; Wheat Production Stabilization—10.058; National Wool Act payments—10.059; Rice Production Stabilization—10.065; Federal Crop Insurance—10.450; Soil and Water Loans—10.416; Loans to Indian Tribes and Tribal Corporations—10.421; Watershed Protection and Flood Prevention loans and cost share payments—10.904; Great Plains Conservation Program cost share payments—10.900; Agricultural Conservation Program cost share payments—10.063; Disaster Assistance payments—10.052, 10.058, 10.065, and 10.440; and Conservation Reserve Program payments—10.069. This rule also applies to payments under the Agricultural Credit Act—10.054; and payments under the Agricultural Water Quality Incentives Program and the Environmental Easement Program authorized by the Food Security Act of 1985, as amended (these programs have not been assigned catalog numbers as of this time).

This rule is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1981).

In order to assist agency planning and in compliance with the National Environmental Policy Act (NEPA), the Department has conducted an interagency and interdisciplinary environmental assessment of the potential effects of implementing the conservation provisions of the 1990 Act. Representatives of several Federal agencies, including the United States Army Corps of Engineers, the Environmental Protection Agency, and the United States Fish and Wildlife Service, have been consulted in this assessment during the development of the proposed rule and this final rule. On the basis of the environmental assessment, it has been determined that this rule does not constitute a major federal action significantly affecting the quality of the human environment and a finding of no significant impact (FONSI) has been prepared. The environmental assessment that was prepared during the promulgation of the current regulations in 7 CFR part 12 has been reviewed to assess the effect of the changes in the regulations required by the 1990 statutory amendments that are the subject of this final rule. The Department has determined that the implementation of this rule by the agencies of the Department will: (a) Not cause any measurable adverse environmental effects; (b) not diminish the long term environmental productivity of the Nation's resources; and (c) not cause any irretrievable commitments of natural resources. To the contrary, the conservation provisions of the 1990 Act and of this implementing rule are expected to maintain or enhance environmental values in rural agricultural areas. Therefore, under the provisions of NEPA are related regulations, a detailed environmental impact statement is not required. Requests for copies of the environmental assessment and the FONSI may be sent to the previously mentioned contact.

Discussion of Comments

On March 5, 1991, the Department published a proposed rule to implement amendments to the highly erodible land conservation (HELC) and wetland conservation (WC) provisions of title XII of the Food Security Act of 1985 ("FSA"), Public Law No. 99-198, 16 U.S.C. 3801 *et seq.* The amendments to those provisions of the FSA are contained in title XIV of the Food, Agriculture, Conservation, and Trade Act of 1990 ("1990 Act"), Public Law 101-624. In response to the proposed rule, USDA received 164 letters containing 323 comments. Entities responding included farm organizations, land associations, wildlife groups, individuals, units of government, and others from twenty states and the District of Columbia. USDA has consulted with the United States Army Corps of Engineers, the Environmental Protection Agency (EPA) and the United States Fish and Wildlife Service (FWS) in preparing this final rule. Comments are discussed below in order of the

related section for which revisions of 7 CFR part 12 were set out in the proposed rule. The discussion indicates where a change in the rule was determined to be appropriate based on the public comments. Those proposed amendments to part 12 on which only affirmative comments were received or on which comments were not received are not discussed and are adopted as set forth in this rule.

Section 12.1 General

Several respondents objected to the overall approach of the conservation provisions of the FSA, the 1990 amendments, and the Department's regulations. They stated that these provisions place an undue economic hardship on the producers and that the proposed rule results in an unfair reversal of well-intentioned policy and do not assign enough authority to local USDA officials. These comments did not suggest specific modification for the regulations. Implementation of the HELC and WC provision of the FSA, as amended, is required by law, and except as indicated below, USDA has determined that revisions of the proposed rule to address these concerns are not warranted.

Ninety comments suggested that the wetland conservation rules involved a taking of private property and that a takings assessment is required under the provisions of Executive Order No. 12630. USDA has determined this final rule does not present implications relating to the taking of private property since the provisions of this rule do not prohibit or restrict land uses. Rather, this rule implements statutory requirements for eligibility for USDA benefits. Participation in the USDA programs covered by this rule is voluntary and the requirements of part 12 apply only to those producers who choose to participate in those programs.

Eighteen comments suggested that the comment period for the proposed rule should have been extended beyond 15 days. However, such an extension would have made it impossible to assure completion of the final rule by the end of the spring sign-up period for a number of USDA commodity programs and the Conservation Reserve Program. Because of the relatively limited scope of the proposed regulations, which for the most part only modifies current rules, USDA determined that a longer period would have been contrary to the public interest by preventing agricultural producers from making timely plans to adjust to new provisions in the rules.

Section 12.2 Definitions

Because the 1990 Act extended the coverage of the HELC provisions to land set aside or otherwise diverted from production under USDA programs, the proposed rule added a definition of the term "conservation use" to describe the additional land covered by those new provisions. One comment suggested that USDA change the term "conservation use" to "non-crop production." The comment was not adopted as the suggested term would not accurately describe land that is designated as acreage conservation reserve (ACR) or conservation use (CU) acreage for payment under USDA programs and because the term used in the proposed rule is more descriptive of the scope of coverage.

Seventeen comments were received concerning the definition in part 12 of "active pursuit" and "commenced conversion". No changes in those definitions have been made as no changes in those definitions are needed to implement the 1990 amendments and no changes in those definitions were proposed in the proposed rule.

The proposed rule contained a definition of "wetland" to reflect that the 1990 amendments restated the statutory definition slightly to clarify that three distinct criteria must be present in order for land to be classified as wetland. Those criteria are: (1) A predominance of hydric soils; (2) the inundation or saturation by surface or ground water at a frequency and duration to support a prevalence of hydrophytic vegetation; and (3) a prevalence, under normal circumstances, of hydrophytic vegetation. Thirty-three comments suggested that USDA change the definition to include only lands that were obviously "wet" as of December 23, 1985. Many of these comments suggested, more generally, that the agency's construction of the definition of wetland in the past was overly expansive. No change in the definition of "wetlands" has been made in the final rule as the definition is the same as that which is explicitly provided in the legislation. Those producers who believe that the definition is incorrectly applied in individual cases can seek administrative review of those determinations.

Four comments suggested a change in the producers and the technical criteria used to determine when the conditions set forth in the wetland definition apply. One comment suggested that land should not be considered to be a wetland unless water is present at the surface of the land for at least 21 consecutive days during the growing season, if the land is planted more often than not. However, research indicates that the anaerobic conditions of hydric soils and a prevalence of hydrophytic vegetation develop in areas that are normally exposed to a 7–15 day period of inundation or saturation. The suggested 21-day period would be longer than that normally required to develop characteristics typically associated with a wetland. Use of a 21-day hydrology requirements would, in addition, have the effect of excluding many wetlands and certain regions from wetland protection under the FSA. For example, many prairie potholes, vernal pools, and playas do not pond, more often than not, for more than 21 consecutive days during the growing season, yet these wetlands provide important wetland benefits. Therefore, it has been determined that there is not an adequate technical basis to include the suggested criterion in the amendment of the regulations adopted in this rule.

Also, several comments suggested that all wetland determinations should be completed on-site. These concerns are addressed in § 12.30 (c) and (d) of the proposed regulations which provide in accordance with the 1990 Act, that on-site investigations will be made before any USDA benefits are withheld.

One comment suggested that with respect to determinations of wetland status made by the Soil Conservation Service (SCS), SCS should only consider whether hydrophytic vegetation is present on the site and that SCS should not review similar hydric soils in the area to ascertain whether hydrophytic vegetation could grow in that soil type. This comment relates to the off-site comparison procedure which is set forth in § 12.31(b)(2)(ii) and was not proposed to be changed. This procedure is necessary to identify wetland vegetation characteristics of an area when the vegetation has been removed by cultivation or other land altering activities. Accordingly, the change recommended in the comment is not adopted.

Section 12.4 Determination of Ineligibility

The proposed rule contained provisions to amend § 12.4 to include: (1) The designation of highly erodible land as land for conservation use, and (2) the conversion of wetland as actions that may cause a producer to be ineligible for USDA benefits. The proposed rule also contained provisions which clarified the period of ineligibility and which, in accordance with the 1990 Act, added to the list of USDA benefits

that are covered by the ineligibility provisions.

One comment suggested that USDA consider the conversion of native plant communities to be a violation of the HELC provisions regardless of whether an agricultural commodity was planted on the highly erodible land. Another comment suggested that a producer be determined ineligible when an agricultural commodity is planted or land is designated as ACR or CU on a field that is predominately converted wetland, where "predominant" is defined as greater than 50% of the field. These suggestions were not adopted as the modifications that they seek are not authorized by the FSA.

One comment suggested that the regulations should be amended to exempt a producer from loss of benefits for wetland alterations caused by the drainage of land that is required or otherwise caused by a mosquito control board or other local regulatory authority. There are already two provisions in the regulations allowing for, in appropriate cases, exempting a producer for wetland alterations caused by actions of unaffiliated third parties. One of those is the so-called "third party" exemption in § 12.5(b)(1)(iv)(D), as redesignated in this rule, which applies to alterations or conversions by persons, organizations, or units of government other than the person applying for USDA benefits or the person's predecessors in interest. However, even where the exemption is approved, drainage improvement beyond that required or caused by the third party is not permitted without loss of USDA benefits. There is also "minimal effects" and "mitigation" exemptions provided in the regulations which will permit alterations if the effects on wetland functions and values are minimal or otherwise mitigated.

One comment suggested that, for any violations of the WC provisions, USDA withhold all loans to the person involved that would otherwise be available from the Farmers Home Administration (FmHA). This comment was not adopted as the FSA, with respect to FmHA loans, limits ineligibility to cases where the Secretary determines that the proceeds of such loan will be used for a purpose that will contribute to excessive erosion of highly erodible land or conversion of wetlands.

Three comments addressed whether certain benefits administered by the Agricultural Stabilization and Conservation Service (ASCS) and/or the Commodity Credit Corporation (CCC) should be covered by part 12. Specifically these comments questioned whether "dairy refund" payments and payments under the Agricultural Conservation Program (ACP) should be covered. Dairy refund payments are those payments which, in certain instances, can be made to milk producers in connection with the recently implemented dairy assessment program (7 CFR part 1430) required by amendments to the Agricultural Act of 1949 ("1949 Act") that were enacted by the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508). Dairy refund payments were not specifically addressed in the proposed rules; however, the current regulations in part 12 provide that coverage of the ineligibility provisions extends, as to any commodity, to any payment under the 1949 Act. Since dairy refund payments are 1949 Act payments made with respect to a commodity, such payments are subject to part 12. With respect to the ACP, which is administered under rules in 7 CFR part 701, coverage of such payments was specifically added by the 1990 Act amendments to the FSA and, accordingly, part 12 applies to all ACP obligations incurred after the effective date of the 1990 Act (November 28, 1990).

Section 12.5 Exemptions

The proposed rule contained provisions allowing a producer, in appropriate cases, to be granted a variance from the application of the HELC provisions of part 12. Three comments suggested that the rule be modified to specify that variances may only be temporary. As it is the intent of USDA that such variances from the conservation compliance requirement of the rule will be granted for one-year periods only, this comment has been adopted and the rule has been modified accordingly. Specifically, it is anticipated that the modification to the HEL conservation plan, as a result of a variance, will permit the conservation practices to be postponed until the following year during which time those practices must be completed along with those practices originally scheduled for the following year. However, in appropriate cases, another variance may be granted for cause in subsequent years.

Fifty-four responses suggested that drainage districts projects should not, under any circumstance, affect an individual's eligibility for USDA benefits. Such an exemption is not provided for in the FSA and would undermine the purpose of the WC provisions of the FSA by condoning large-scale uses of recently or soon-to-be converted wetlands for agricultural commodity production.

Under the FSA, prior to the 1990 Act amendments and under the current regulations, a producer who is within the jurisdiction of a drainage district or other similar entity would be considered to have participated in the wetland conversion activities of the district or other entity, but could have avoided any ineligibility simply by not producing an agricultural commodity on wetlands converted by the district. However, the 1990 Act amendments provide that, in addition to the "planting" trigger, the conversion of a wetland for the purpose, or to have the effect, of making the production of agricultural commodities possible will also trigger a WC violation. Because of this new "conversion" trigger and the current regulations' attribution of drainage district conversion activities to all producers within the district's jurisdiction, a producer could be determined to be in violation of the new "conversion" trigger for conversions completely unrelated to the producer's lands and agricultural production activities. In fact, persons who did not produce any agricultural commodities but did participate in USDA programs could be affected. In the proposed rule, a provision was added to specify that while the "planting" trigger would be maintained, a producer would not be considered to have "converted" the wetland for purpose of applying the new "conversion" trigger in such a situation. Under the final rule, as in the proposed rule, the drainage of a wetland by a drainage district will not, absent a scheme or device, subject the producer to an ineligibility for USDA benefits unless the producer then produces an agricultural commodity or forage for harvest by mechanical means on the converted land.

Another comment suggested that the new "conversion" trigger may unfairly affect producers where the actions of the drainage district result in the drainage of a farmed wetland, since producers have been permitted under part 12 to produce an agricultural commodity on that land in certain circumstances. In addition, thirty-one comments suggested that farmed wetlands should be exempt entirely from the WC provisions. Provision is already made in the regulations to allow for continued use of those lands for agricultural production so long as the hydrology is not diminished or if the effects of their conversion are found to be minimal or otherwise mitigated. There is no other specific exemption in the statute for the conversion of such wetlands. The legislative history of the 1990 Act indicates that Congress was aware of the protection provided under

part 12 for farmed wetlands and wanted such protection to continue.

The proposed rule contained provisions to amend § 12.11 to specifically allow for relief from actions resulting from the misaction or misinformation of any authorized representative of the Secretary. In addition, a specific provision was proposed to be added to § 12.5 of the regulations to cover instances of reliance on an incorrect determination of wetland status by SCS. A number of comments suggested that relief should not be permitted where SCS informed the person that the area was not a wetland, if it was clear to the person that the area, in fact, was a wetland. Others stated that the exemption should not be used retroactively to exempt persons from prior violations caused by such reliance. It has been determined that no material change to § 12.5, as proposed, is needed. The 1990 Act explicitly provided that no person shall be adversely affected because of having taken an action based on an erroneous wetland determination and the rules would permit a determination on a case-by-case basis of whether there was, in fact, reasonable reliance on the SCS determination. However, this portion of the rule has, as a result of these comments, been clarified. With respect to retroactivity, there is nothing in the statutory amendments which provides for or would justify an exclusion from consideration of misinformation or misaction occurring prior to the enactment of the 1990 amendments.

The proposed rule included a number of additional relief provisions required or authorized by the 1990 Act. These included provisions for relief in the case of "good faith" violations and provisions for relief in cases involving the mitigation of the effects of the conversion of frequently-cropped wetlands. As does the 1990 Act, the proposed rule provided for continuing the authority of the USDA to grant relief in cases of conversions having a "minimal effect" on the functional hydrological and biological value of the wetland, including value to waterfowl and wildlife. Several comments suggested the USDA did not have the legal authority to continue to make a minimal effect finding that included mitigation and restoration unless the land had been farmed more often than not. With respect to those comments, it has been determined that the rule should not be changed. As has been the practice of USDA under the current regulations, a minimal effects determination may in some limited cases be based upon the mitigation of the effects of wetland conversion, including the restoration of converted wetlands. USDA plans to use the following guidelines when determining whether a minimal effects finding with mitigation or restoration of wetland value is appropriate: (1) Minimal effect for replacement of wetlands not frequently-cropped will be used only where the purpose of the conversion is not solely the increase of production of an agricultural commodity on the converted wetland, such as cases where removal of woody vegetation will allow center pivot systems to function, or the squaring-off of corners of fields; (2) Replacement will require replacement for the functional values lost; (3) Minimal-effect with mitigation or restoration must be granted in advance of the conversion, and never after the conversion if the wetland to be converted was not frequently cropped; (4) Replacement must take place on prior converted cropland; (5) The producer will be advised that all necessary Federal, State, and local permits should be secured prior to approval of the plan to replace lost values; (6) The plan to replace lost values must be concurred with by SCS and agreed to by FWS at the local level with consultation at the State level; (7) The plan shall include language to the effect that the plan does not exempt the producer from any other wetland protection rules and regulations outside the purview of part 12; (8) USDA shall require an easement for the mitigated land; (9) A copy of the signed restoration agreement will be forwarded to the national office of SCS and USFWS for their review. The authority to use minimal effects exemptions was continued in the 1990 Act essentially unchanged. Those provisions dealing with mitigation of frequently-cropped wetlands are additional provisions under which Congress directed that relief in appropriate cases will be provided. The legislative history of the 1990 Act indicates that the Congress was satisfied with USDA's current minimal effect exemption policies and procedures. Relief in all instances will be determined on a case-by-case basis and the relief provisions can be administered as determined to be needed to avoid conflict among the several relief provisions added to part 12.

With respect to the restoration requirements contained in the proposed rule concerning the use of mitigation in cases of the conversion of frequently-cropped wetland, one comment suggested that the proposed rule did not comport with the legislative intent that the amount of acreage replacement be not less than, and generally not greater than a one-for-one acreage basis unless more acreage is needed to provide equivalent functions and values that will be lost as a result of the conversion to be mitigated. This final rule modifies the proposed rule to clarify that mitigation in those instances on a greater than a one-for-one acreage basis will not be required unless SCS specifically determines that more acreage is needed.

The proposed rule, in accordance with the 1990 Act, contained requirements concerning the location of the land to be used for the specific mitigation provisions of the regulations. The 1990 Act amendments specify that the land to be used for mitigation must be "in the same general area of the local watershed" as the land to be converted. The proposed rules also contained a provision allowing the use of mitigation banks for the specific mitigation provisions of part 12. One comment expressed concern that § 12.5(b)(6)(i)(D), as proposed, implied that land in mitigation banks used for this purpose could be located in areas other than the same hydrological unit or watershed as the land to be converted. Other comments recommended that the words permitting the land to be used for mitigation to be "near" the same watershed be omitted. In this final rule, the regulations have been clarified to specify that land from mitigation banks are subject to the same location requirements. With respect to the latter comment, the allowance of mitigation near but outside of the watershed is, as indicated, specifically permitted by the 1990 Act. The regulations, as proposed and as adopted in this rule, require that in all cases the land to be used for mitigation must be as close as practicable to the wetland that is to be converted.

Two comments suggested that for purposes of the mitigation provisions of the rule, the rule should allow the restoration of farmed wetland. The 1990 Act and its legislative history make a clear distinction between farmed wetland and converted wetlands, and the statute specifically requires that an exemption under the explicit mitigation provisions in the 1990 Act amendments will require the restoration of a converted wetland. The statute, does not permit the suggestion revision. Likewise, limiting the converted wetlands that can be used for this purpose to wetlands converted prior to December 23, 1985, is required by the provisions of the 1990 Act and comments suggesting an expansion of the proposed rule to include that use of recently converted

wetlands for mitigation have not been adopted.

Three comments were received suggesting that exemptions for non-agricultural production should be clarified because of possible conflict with requirements of the Clean Water Act, which is administered by the United States Army Corps of Engineers. Efforts have been and will continue to be made to coordinate the activities of the various federal agencies with jurisdiction over matters relating to wetlands. In addition, SCS will endeavor to inform producers that determinations made under part 12 will not relieve producers from complying with other environmental laws and regulations. No change is warranted in the provisions adopted in this final rule to provide this information.

One comment expressed concern that the burden of establishing eligibility for an exemption is on the producer seeking the exemption. However, this requirement is reasonable and necessary, particularly as the information relating to the exemption will, in most cases, be in the possession of the producer.

With respect to the new conversion trigger in the 1990 Act, which provides that a WC violation will be considered to have occurred when a wetland is converted so as to make possible the production of an agricultural commodity, the proposed rule set out certain conversion purposes that would not be considered to make the production of an agricultural commodity, as defined in the regulations, possible. In response to comments suggesting that the production of cranberries be specifically addressed, it has been determined, based on data supplied in the comments, to modify the rule to specifically include the conversion of land for cranberry production, which is similar to the conversion of the land for vineyards or shrubs.

One comment suggested that conversion to pasture should be included in the list of conversion purposes that would not be considered to be a WC violation. This may not be done since such a conversion would make the production of an agricultural commodity possible and, under the 1990 Act amendment, would be considered to be a WC violation.

With regard to the graduated sanctions for "good faith" violations, one comment suggested that tables for establishing the amount of payment reductions for various kinds of cases be set out in the rule. It has been determined that adding payment reduction tables to the rule is unnecessary and would unduly limit the ability of ASCS to tailor relief to individual cases. Other comments suggested that some limitation should be placed on the ability of ASCS personnel to grant "good faith" relief. To avoid the granting of relief in inappropriate cases, specific provisions were included in the administrative procedures for internal USDA review to ensure that relief pursuant to the specific criteria of § 12.6(b)(3)(ix), as proposed, will be rarely granted.

Under the proposed rule and the 1990 Act amendments, the granting of "good faith" relief requires that the converted wetland be restored. One comment suggested that farmed wetlands which are converted should only be required to be restored to farmed wetland status. No change in regulation is needed to address this concern. In administering the final rule, it is intended that restoration will be required to the status that existed as of December 23, 1985, the date the WC provisions were first enacted. This is considered to be an appropriate standard for implementing the permissive good faith provisions of the 1990 Act in that it will preserve the standards of wetland conservation established by the FSA in 1985 and avoid the sanctioning of incremental degradations of the wetland condition that may have occurred since then.

Section 12.6 Administration

Two comments opposed the provision of § 12.6 of the proposed rule which requires a public listing of wetland determinations. However, that provision is authorized by the 1990 Act. Another comment suggested that HEL lands be similarly listed. The FSA does not require such a listing. Because of the administrative burden entailed, this comment has not been adopted.

Section 12.12 Appeals

One comment suggested that with respect to § 12.12 of the regulations, appeals under part 12 should not be completed pending the creation of a National Appeals Division in ASCS. Provisions for the creation of such a Division are contained in the 1990 Act. The comment regarding § 12.12 goes beyond the scope of the proposed rule as no modification of that section was proposed. Further, suspending appeals would place an unfair burden on producers with a legitimate ground for relief. Should amendments to the part 12 be needed upon a change in ASCS's organizational structure, such an amendment will be proposed at that time.

Section 12.23 Conservation Plans and Conservation Systems

The proposed rules set out amendments for § 12.23 to provide that, in providing assistance to a person for the preparation or revision of a conservation plan to meet HELC requirements, SCS will provide such person with information concerning cost-effective and applicable erosion control alternatives, crop flexibility, base adjustment or other conservation options that may be available. Five comments were received regarding alternate conservation systems. The respondents noted that the legislative history indicates the intent of Congress to be that, as producers seek to modify their plans, the Secretary should encourage producers to adopt other cost-effective erosion control practices, including contour farming and strip-cropping. The comments further stated that it was Congress' intent that the Secretary utilize the potential of crop-rotations to further help producers economically achieve erosion control objectives on their farms. The respondents objected that the proposed rule is silent on how the Department intends to encourage wider adoption of alternative agricultural practices and recommended that the final rule incorporate specific guidelines and procedures to fulfill Congressional intent.

This suggestion has not been adopted as it is not practicable to establish specific guidelines for a myriad of individual circumstances within the context of these regulations and such specificity could ultimately inhibit the ability of the SCS to address particular cases as the need arises or becomes apparent through experience. Furthermore, the suggested modification in the rule is not needed to achieve Congress' objectives. Conservation plans are developed through the use of technical guidelines for crop rotations, conservation practices, and treatments for erosion control contained in SCS' Field Office Technical Guide (FOTG). The FOTG is developed at the county level to set out locally accepted, economically sound and practical conservation systems that producers can use on their farms and include in their conservation plans. These conservation systems are intended to include all practical combinations known to SCS of crop rotations, conservation practices, and treatments that are cost-effective and generally accepted in that locality. Some practices that are not yet generally used in that locality are also included to give

producers the option of using new practices and new technology, where it is determined in the individual case to be appropriate. USDA intends that the FOTG will continue to be used as the source of technical guidelines for this purpose. SCS will continue to encourage farmers to consider all reasonable options and to work with farmers to develop such options.

Another comment objected to the provision in § 12.23 concerning information to be supplied by SCS to producers, stating that the proposed paragraph merged, and thus blurred, the requirements of two separate sections of the 1990 Act amendments. The proposed paragraph does merge two similar requirements for SCS to provide information to producers, as SCS normally provides such information in its technical assistance programs. As this provision of the rule is consistent with the 1990 Act, no modification of the rule is needed.

Another comment suggested that the HELC requirements of part 12 could cause a conflict with the acreage reduction (ACR) provisions of USDA price support program which may require the planting of a cover crop. Because the conservation plans prepared under part 12 may also require cover crops, no conflict is perceived. Should such a conflict arise it can be addressed through established procedures for USDA programs.

One coment was received concerning the need to amend the regulations to allow tile, that was installed by hand and placed deep enough for farming with horses, to be placed deeper to facilitate the use of new equipment without causing a WC violation. The 1990 Act does not change the FSA with respect to this issue. If land is designated "prior converted cropland" or is non-wetland, tile can be installed at any depth and at any spacing as long as the activity does not result in the drainage of additional wetlands. However, for areas designated as "farmed wetland", only maintenance of draining systems can be performed. Such maintenance is allowed to the extent that it does not increase the scope and effect of previous drainage. If new tile lines can be installed on farmed wetland at a lower depth without changing the scope and effect of the previous drainage, then such maintenance would be allowed. In addition, the installation of drainage tile at a lower depth would not cause a producer to be ineligible if the effects of the change on wetland values are determined to be minimal or are mitigated. As the proposed rule on this question is consistent with the authorizing legislation, no adjustment of the rule has been made.

Section 12.30 SCS Responsibilities Regarding Wetlands

One comment recommended a change that would allow interested third parties to appeal any determination made under the regulations. It has been determined that it is not necessary or appropriate to expand the appeal procedures to allow for third party representation. Such participation is not provided in the FSA; furthermore, the only determination made under part 12 is the eligibility of producers for benefits; therefore, the only adversely affected parties under part 12 are producers. Additional representation by outside parties would inhibit the administration of the various programs covered by part 12. Two comments suggested that state natural resource agencies be included in making technical determinations, specifically minimal effect determinations, under § 12.5 and § 12.30 of the regulations. Another comment suggested that the State Technical Committees, which are provided for in title XIV of the 1990 Act, participate in such determinations. The FSA, as amended, makes specific provisions for consultation with FWS and there is not perceived to be any need to extend formal consultation on these matters to additional agencies. Of course, informal consultation with other agencies can be and will be undertaken when needed. The State Technical Committees have not been formally established at this time, but they will provide advice to the Secretary of Agriculture on matters relating to the conservation provisions of the 1990 Act. Another comment objected that the proposed rule does not cover statutory requirements for the periodic review and update of wetland delineations by SCS. As this is an administrative requirement for SCS, and not a requirement of procedures, the provision was not set forth in the rule but will be included in the SCS Manual.

One comment suggested that the 45 day appeal period for certification of wetland determinations be extended. Based on the experience of SCS in administering the WC provisions of part 12, it has been determined that the 45 day period provides adequate opportunity for producers to notify SCS of their objections.

Two comments suggested that USDA implement a joint appeal system for SCS and ASCS. Because these agencies operate under differing sets of responsibilities and differing organizational structures, use of a joint appeal system would be unwieldy and inefficient. No change in the part 12 has been made in response to this comment.

Section 12.33 Use of Wetland and Converted Wetland

The proposed rule would revise this section to clarify that for wetlands cropped prior to December 23, 1985, maintenance of existing alternatives on the land will not result in a WC violation if the maintenance does not exceed the scope and effect of the original alteration or manipulation. One comment was received suggesting that § 12.33 should define "scope and effect" and not leave the determination to the judgment of SCS. The determination of scope and effect is a technical hydrologic determination based on generally accepted engineering principles and computations which guide and control the decisions of SCS officials. The FSA commits these determinations to the professional judgment of SCS. No change is made as the establishment of additional specific requirements could inhibit the proper exercise of discretion by SCS.

List of Subjects in 7 CFR Part 12

Highly erodible land, Wetland, Conservation, Price support programs, Federal crop insurance, Farmers Home Administration loans, Incorporation by reference, Loan programs, Agriculture, Environmental protection.

Accordingly, title 7, part 12 of the Code of Federal Regulations is amended as follows:

PART 12—HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION

1. The authority citation for part 12 is revised to read as follows:

Authority: 16 U.S.C. 3801 *et seq.*

2. Section 12.1 is amended by revising paragraph (a) to read as follows:

§ 12.1 General.

(a) This part sets forth the terms and conditions under which a person who produces an agricultural commodity on highly erodible land or designates such land for conservation use, plants an agricultural commodity on a converted wetland, or converts a wetland shall be determined to be eligible for certain benefits provided by the United States Department of Agriculture and agencies and instrumentalities of the Department.

* * * * *

3. Section 12.2 is amended by adding a comma after the word "planted" in paragraph (a)(1), redesignating paragraphs (a)(7) through (a)(28) as paragraphs (a)(8) through (a)(29)

respectively, adding new paragraph (a)(7), and revising newly redesignated paragraph (a)(29), to read as follows:

§ 12.2 Definitions.

(a) * * *

(7) *Conservation use* or set aside means cropland that is designated as conservation use acreage, set aside or other similar designation for the purpose of fulfilling any provisions under any acreage limitation or land diversion program administered by the Secretary of Agriculture, requiring that the producer devote a specified acreage to conservation or other non-crop production uses.

* * * * *

(29) *Wetland,* except when such term is a part of the term "converted wetland", means land that

(i) Has a predominance of hydric soils;

(ii) Is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions;

(iii) And under normal circumstances does support a prevalence of such vegetation, except that this term does not include lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils.

* * * * *

4. Section 12.3 is amended by revising paragraph (b) as follows:

§ 12.3 Applicability.

* * * * *

(b) The provisions of this part apply to all actions taken after and to determinations made after or pending on November 28, 1990, except to the extent that § 12.5(b)(6) through (b)(8) have retroactive application to December 23, 1985 for certain actions and determinations regarding wetlands and converted wetlands. Actions taken and determinations made prior to November 28, 1990 are subject to regulations set forth in this part as of November 27, 1990.

5. Section 12.4 is revised to read as follows:

§ 12.4 Determination of ineligibility.

(a) Except as provided in § 12.5, a person shall be ineligible for all USDA program benefits listed in paragraph (c) of this section if:

(1) The person produces an agricultural commodity on a field in which highly erodible land is predominant, or designates such a field as conservation use;

(2) The person produces an agricultural commodity on wetland that was converted after December 23, 1985; or

(3) After November 28, 1990, the person converts a wetland by draining, dredging, filling, leveling or other means for the purpose, or to have the effect, of making the production of an agricultural commodity possible.

(b) A person determined to be ineligible under paragraphs (a)(1) or (a)(2) of this section shall be ineligible for all of the USDA program benefits listed in paragraph (c) of this section for which the person otherwise would have been eligible during the crop year for which the determination applies. A person determined to be ineligible under paragraph (a)(3) of this section for the conversion of a wetland shall be ineligible for all of the USDA program benefits listed in paragraph (c) of this section for which the person otherwise would have been eligible during the calendar year for which the determination applies and each subsequent calendar year until the converted wetland is restored.

(c) USDA program benefits covered by a determination of ineligibility under this rule are:

(1) Any type of price support or payment made available under the Agricultural Act of 1949, 7 U.S.C. *et seq.*), the Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*), or any other Act;

(2) A farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h));

(3) Benefits under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*);

(4) A disaster payment made under the Agricultural Act of 1949. (7 U.S.C. 1421 *et seq.*); or under section 132 of the Disaster Assistance Act of 1989 (16 U.S.C. 1421 *et seq.*) or any similar provisions enacted subsequent to August 14, 1989;

(5) A farm loan made, insured, or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*) or any other provision of law administered by the Farmers Home Administration if the Secretary determines that the proceeds of such loan will be used for a purpose that contributes to the conversion of wetlands that would make production of an agricultural commodity possible or for a purpose that contributes to excessive erosion of highly erodible land (i.e., production of an agricultural commodity or highly erodible land without a conversion plan or conservation system as required by this part);

(6) A payment made under section 4 or 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b or 714c) for the storage of an agricultural commodity acquired by the Commodity Credit Corporation;

(7) A payment made under section 8, 12, or 16(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h, 590(1), or 590p(b));

(8) A payment made under section 401 or 402 of the Agricultural Credit Act of 1978 (16 U.S.C. 2201 or 2202);

(9) A payment made under any contract entered into pursuant to section 1231 of the Food Security Act of 1985, as amended (16 U.S.C. 3831);

(10) A payment made under chapter 2, Agricultural Water Quality Incentives Program, or chapter 3, Environmental Easement Program, of subtitle D, Title XII of the Food Security Act of 1985, as amended; and

(11) A payment, loan, or other assistance under section 3 or 8 of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1003 or 1006a).

(d) The provisions of paragraphs (a) and (b) of this section do not apply to any loan described in paragraph (c) of this section that was made prior to December 23, 1985.

(e) For the purposes of paragraph (a) of this section, a person shall be determined to have produced an agricultural commodity on a field in which highly erodible land is predominant or to have designated such a field as conservation use, to have produced an agricultural commodity on converted wetland, or to have converted a wetland if:

(1) SCS has determined that—

(i) Highly erodible land is predominant in such field, or

(ii) All or a portion of the field is converted wetland; and

(2) ASCS has determined that the person is or was the owner or operator of the land, or entitled to share in the crops available from the land, or in the proceeds thereof; and

(3) With regard to the provisions of paragraphs (a)(1) and (a)(2) of this section, ASCS has determined that the land is or was planted to an agricultural commodity or was designated as conservation use during the year for which the person is requesting benefits.

(f) Persons who wish to participate in any of the USDA programs described in paragraph (c) of this section are responsible for contacting the appropriate agency of the Department well in advance of the intended participation date so that Form AD–1026 can be completed. This contact will help assure that the appropriate

determinations regarding highly erodible land or wetland, and conservation plans or conservation systems are scheduled in a timely manner. A late contact may not allow sufficient time for USDA to service the request and could result in a substantial delay in receiving a USDA determination of eligibility or ineligibility.

6. Paragraph (b)(2) of § 12.5 is removed, paragraphs (a) through (c) are redesignated as paragraphs (a)(1) through (a)(3) and revised, and new paragraphs (a)(4) through (a)(6) are added to read as follows:

§ 12.5 Exemptions.

(a) *Exemptions regarding highly erodible land.—(1) Highly erodible cropland in production or in Department programs during 1981 through 1985 crop years.* During the period beginning on December 23, 1985, and ending on the later of January 1,1990, or the date that is two years after the date the cropland on which an agricultural commodity is produced was surveyed by the SCS to determine if such land is highly erodible, no person shall be determined to be ineligible for benefits as provided in § 12.4 as the result of the production of a crop of an agricultural commodity on any highly erodible land:

(i) That was planted to an agricultural commodity in any year 1981 through 1985; or

(ii) That was set aside, diverted or otherwise not cultivated in any such crop years under a program administered by the Secretary for any such crops to reduce production of an agricultural commodity.

(2) *Compliance with a conservation plan or conservation system.* As further specified in this part, no person shall be ineligible for the program benefits described in § 12.4 as the result of production of an agricultural commodity on highly erodible land or the designation of such land as conservation use if such production or designation is in compliance with an approved conservation plan or conservation system.

(i) With respect to the production of an agricultural commodity on any land identified under paragraph (a)(1) of this section, if, as of January 1, 1990, or the date that is 2 years after the date SCS has completed a soil survey of the cropland on the tract or farm, whichever is later, a person is actively applying a conservation plan based on the local SCVS field office technical guide and approved by the CD, in consultation with the local ASC committees and SCS, such person shall have until January 1, 1995, to fully comply with the plan without being determined to be ineligible for benefits under § 12.4.

(ii) A person shall not be ineligible for program benefits under § 12.4 as the result of the production of an agricultural commodity on highly erodible land or as the result of designation of such land as conservation use if the production or designation is:

(A) In an area within a CD, under a conservation system that has been approved by the CD after the CD determines that the conservation system is in conformity with technical standards set forth in the SCS field office technical guide for such district; or

(B) In an area not within a CD, under a conservation system that has been approved by SCS to be adequate for the production of such agricultural commodity on highly erodible land or for the designation of such land as conservation use.

(3) *Reliance upon SCS determination for highly erodible land.* A person may be relieved from ineligibility for program benefits as the result of the production of an agricultural commodity which was produced on highly erodible land or for the designation of such land as conservation use in reliance on a determination by SCS that such land was not highly erodible land, except that this paragraph shall not apply to any agricultural commodity that was planted on highly erodible land, or for the designation of highly erodible land as conservation use after SCS determines that such land is highly erodible land, and the person is notified of such determinations.

(4) *Areas of 2 acres or less.* No person shall be determined to be ineligible under § 12.4 for noncommerical production of agricultural commodities on an area of 2 acres or less if it is determined by ASCS that such production is not intended to circumvent the conservation requirements otherwise applicable under this part.

(5) *Graduated sanctions.* (i) After November 28, 1990, no person shall become ineligible under § 12.4 as a result of the failure of such person to actively apply a conservation plan that documents the decisions of such person with respect to location, land use, tillage systems, conservation treatment measures and schedules if ASCS determines such person has—

(A) Not violated the highly erodible land provisions of this part within the past 5 years; and

(B) Acted in good faith and without the intent to violate the provisions of this part.

(ii) A person who is determined to meet the requirements of paragraph (a)(5)(i) of this section shall be subject, in lieu of the loss of all benefits specified under § 12.4(c) for such crop year, to a reduction in benefits of not less than $500 nor more than $5,000 depending upon the seriousness of the violation, as determined by ASCS. The dollar amount of the reduction will be determined by ASCS and may be based on the number of acres and the degree of erosion hazard for the area in violation, as determined by SCS, or upon such other factors as ASCS deems appropriate.

(iii) Any person whose benefits are reduced in a crop year under paragraph (a)(5) of this section may be eligible for all of the benefits specified under § 12.4(c) for any following crop year if SCS determines that such person is actively applying a conservation plan according to the schedule set forth in the plan on all highly erodible land planted to an agricultural commodity or designated as conservation use.

(6) *Allowable variances.* (i) Notwithstanding any other provisions of this part, no person shall be determined to be ineligible for benefits as a result of the failure of such person to actively apply a conservation plan if SCS determines that—

(A) The failure is technical and minor in nature and that such violation has little effect on the erosion control purposes of the conservation plan applicable to the land on which the violation has occurred; or

(B) The failure is due to circumstances beyond the control of the person; or

(C) SCS grants a temporary variance from the practices specified in the plan for the purpose of handling a specific problem with SCS determines cannot reasonably be addressed except through such variance.

(ii) A variance granted under this paragraph shall apply for oe crop year and shall not be counted as a violation for purposes of paragraph (a)(5)(i)(A) of this section.

* * * * *

7. Paragraph (d) of § 12.5 is redesignated as paragraph (b), and paragraphs (d)(1) through (d)(1)(v) are redesignated as paragraph (b)(1) through (b)(1(iv)(C) and revised as follows:

§ 12.5 Exemptions.

* * * * *

(b) *Exemptions for wetland and converted wetland.* (1) A person shall not be determined to be ineligible for program benefits under § 12.4 as the result of the production of an agricultural commodity on converted wetland or the conversion of wetland:

(i) If the conversion of such wetland was commenced or completed before December 23, 1985; or

(ii) If the conversion is for a purpose that does not make the production of an agricultural commodity possible, such as conversions for fish production, trees, vineyards, shrubs, cranberries, or building and road construction and no agricultural commodity is produced on such land; or

(iii) If SCS has determined that the actions of the person with respect to the conversion of the wetland, or the production of an agricultural commodity on the converted wetland, individually and in connection with all other similar actions authorized by SCS in the area, would have only a minimal impact on the functional hydrological and biological aspect of wetlands; or

(iv) If the area is:

(A) An artificial lake, pond or wetland created by excavating or diking non-wetland to collect and retain water for purposes such as water for livestock, fish production, irrigation (including subsurface irrigation), a settling basin, cooling, rice production, or flood control; or

(B) A wet area created by a water delivery system, irrigation, irrigation system, or application of water for irrigation; or

(C) Wetland on which the owner or operator of a farm or ranch uses normal cropping or ranching practices to produce agricultural commodities in a manner that is consistent for the area, where such production is possible as a result of natural conditions, such as drought, and is without action by the producer that destroys a natural wetland characteristic.

* * * * *

8. Paragraph (d)(1)(vi) of § 12.5 is redesignated as paragraph (b)(1)(iv)(D) and is amended by revising the reference to "paragraph (d)(1)(v)" in the second sentence to read "(b)(1)(iii)", and by adding a sentence at the end of the paragraph to read as follows:

§ 12.5 Exemptions.

* * * * *

(b) * * *

(1) * * *

(iv) * * *

(D) * * * Notwithstanding the provisions of the preceding sentences and as determined by ASCS to be consistent with the purposes of this part, the activities of a drainage district or other similar entity will not be attributed to a person to the extent that the activities of the district or entity were beyond the control of the person and the wetlands converted are not used by the person for the production of an agricultural commodity or a forage crop for harvest by mechanical means.

9. Paragraphs (d)(2) through (d)(5)(iv) in § 12.5 are redesignated as paragraphs (b)(2) through (b)(5)(iv), respectively, and are amended by revising the references to "(d)(3)" and "(d)(4)" wherever they appear in the redesignated paragraphs to read "(b)(3)" and "(b)(4)", respectively, and by revising the reference to "§ 12.4(d)(1)(i)" in redesignated paragraph (b)(5)(i) to read "this section".

10. Paragraphs (e) and (f) of § 12.5 are removed, new paragraphs (b)(6) through (b)(8) are added, and paragraph (g) is redesignated as paragraph (b)(9) to read as follows:

§ 12.5 Exemptions.

* * * * *

(b) * * *

(6) *Mitigation through restoration of another converted wetland.* (i) No person shall be determined to be eligible under § 12.4 as the result of the conversion of a wetland that is frequently cropped (a wetland farmed more often than not, as determined from ASCS crop history data) or for the production of an agricultural commodity on a converted wetland that was converted between December 23, 1985 and November 28, 1990, if the wetland values and functions are mitigated through the restoration of a converted wetland, that was converted prior to December 23, 1985. Such mitigation will allow a person to produce agricultural commodities on the converted wetland without being ineligible for future benefits if such restoration:

(A) Is in accordance with a restoration plan approved by SCS with the agreement of the U.S. Fish and Wildlife Service, as described in § 12.30(b);

(B) Is in advance of, or concurrent with, the wetland conversion or the production of an agricultural commodity, as applicable;

(C) Is not at the expense of the federal government, in either supporting the direct or indirect costs of the restoration activity or costs associated with acquiring or securing mitigation sites;

(D) Occurs on lands in the same general area of the local watershed as the converted wetlands, provided that for purposes of this paragraph, lands in the same general area of the local watershed may include regional mitigation banks;

(E) Is on lands for which the owner has agreed to grant an easement to USDA, recorded on public land records, for the maintenance of the restored wetland for as long as the converted wetland for which the mitigation occurred remains in agricultural use or is not returned to its original wetland classification with equivalent functions and values; and

(F) Provides the equivalent functions and values that will be lost as a result of the wetland conversion. Mitigation acreage will be determined by the SCS State Conservationist, in consultation with the U.S. Fish and Wildlife Service, to replace functional wetland values and may either be less than or more than the converted wetland acreage, but generally not greater than on a one for one acreage basis unless needed to provide equivalent functions and value.

(ii) Mitigation agreements required under paragraph (b)(6)(i) of this section involving greater than a one to one acreage restoration are appealable to SCS under § 12.12.

(7) *Graduated sanctions.* (i) A person who is determined under § 12.4 to be ineligible for benefits as the result of the production of an agricultural commodity on a wetland converted after December 23, 1985, or as the result of the conversion of a wetland after November 28, 1990, may regain eligibility for reduced benefits if—

(A) ASCS determines that the person has not otherwise violated the wetland provisions of this part in the previous 10-year period on any tract or farm owned, operated, or leased by such person, and that such person acted in good faith, without the intent to violate the wetland provisions of this part; and

(B) SCS determines that the person is actively retoring or has restored the converted wetland to the wetland conditions that existed prior to conversion according to a restoration plan and schedule approved by SCS in agreement with the U.S. Fish and Wildlife Service, as described in § 12.30(b).

(ii) After the requirements of paragraph (b)(7)(i) of this section are met, USDA may, in lieu of applying the ineligibility provisions of § 12.4, reduce program benefits by not less than $750 nor more than $10,000 for that crop year depending upon the seriousness of the violation, as determined by ASCS in consideration of relevant factors, such as the information available to the producer prior to the violation, previous land use patterns, the number of wetland acres affected, and the recovery time for full restoration of the wetland values.

(iii) The relief allowed by paragraphs (b)(7) (i) and (ii) of this section may apply retroactively to include the restoration of portions of benefits withheld for violations of the wetland

conservation provisions of this part that occurred after December 23, 1985.

(8) *Reliance upon SCS determination for wetland or converted wetland.* A person shall not be ineligible for program benefits as the result of the production of an agricultural commodity on converted wetland or for the conversion of a wetland if such action was taken in reliance on an incorrect determination by SCS as to the status of such land. If the error caused the person to make a substantial financial investment, as determined by the appropriate agency of USDA, for the conversion of a wetland, the person may be relieved of ineligibility for actions related to that portion of the converted wetland for which the substantial financial investment was expended in conversion activities. The relief available under this paragraph shall not apply to the production of an agricultural commodity or to actions related to the conversion of wetland that take place after SCS informs the person of the error, or to situations in which the person knew or reasonably should have known that the determination was in error.

(9) It is the responsibility of the person seeking an exemption related to converted wetlands under this section to provide evidence, such as receipts, crop history data, drawings, plans or similar information, for purposes of determining whether the conversion or other action is exempt in accordance with this section.

§ 12.6 [Amended]

11. Section 12.6 is amended by removing, in each paragraph listed below in the left column, the reference indicated in the middle column from where it appears in the paragraph, and adding in its place the reference indicated in the right column:

Paragraph	Remove (section)	Add (section)
(b)(3)(i)	12.4(b)	12.4(e).
(b)(3)(ii)	12.2(a)(3)	12.2(a)(14).
(b)(3)(v)	12.5(a)(2)	12.4(e) and § 12.5(a)(1).
(b)(3)(viii)	12.5(d) (3) or (4).	12.5(b) (3) or (4).
(b)(3)(ix)	12.5(d)(1)(vi)	12.5(b)(iv)(D).
(c)(2)(iv)	12.5(b)(3)	12.5(a)(3).

12. Section 12.6 is amended by revising the word "determination" in paragraph (b)(3) to read "determinations", removing paragraph (b)(3)(vi), redesignating paragraphs (b)(3)(vii) through (b)(3)(ix) as paragraphs (b)(3)(vi) through (b)(3)(viii), revising paragraph (c)(1), and by adding paragraphs (b)(3)(ix), (b)(3)(x), (b)(6), and (c)(2)(vii) through (xiv) to read as follows:

§ 12.6 Administration.

* * * * *

(b) * * *

(3) ASCS shall make the following determinations which are required to be made in accordance with this part:

* * * * *

(ix) Whether certain violations were made in good faith. County Office good faith determinations shall be reviewed by the ASCS District Director if any of the following conditions apply to the case:

(A) The wetland was officially certified by SCS,

(B) USDA met with the producer to discuss the location of the wetland,

(C) The producer was involved in a previous swampbuster violation issue, or

(D) The wetland is in an uncropped field, and conversion brought new land into production through extensive modification of vegetation and hydrology.

(x) The determination of the amount of reduction in benefits based on the seriousness of the violation, based on technical information provided by SCS and FWS.

* * * * *

(6) ASCS shall maintain in its county offices a public listing of the farms or tracts that have a certified determination of wetland or converted wetland status.

(c) * * *

(1) The provisions of this part that are applicable to SCS shall be administered under the general supervision of the Deputy Chief for Programs, and shall be carried out in the field by the state conservationist, area conservationist, and district conservationist.

(2) * * *

(vii) Whether an approved conservation plan is being actively applied on highly erodible fields in accordance with the schedule specified therein or whether a failure to apply the plan is technical and minor in nature, due to circumstances beyond the control of the person, or whether a temporary variance from the requirements of the plan should be granted.

(viii) Whether an approved conservation system is being used on a highly erodible field.

(ix) Whether the conversion of a wetland is for the purpose or has the effect of making the production of an agricultural commodity possible.

(x) Whether a converted wetland is abandoned.

(xi) Whether the planting of an agricultural commodity on a wetland is possible under natural conditions.

(xii) Whether maintenance of existing drainage of a wetland described in § 12.32(a)(3) exceeds the scope and effect of the original drainage.

(xiii) Whether a plan and schedule for the restoration of a converted wetland will be approved and whether the restoration of a converted wetland is accomplished according to the approved restoration plan and schedule.

(xiv) Whether all pertinent data relating to the determination of a violation and severity of a violation has been provided to ASCS for making graduated sanctions determinations.

* * * * *

13. Section 12.7 is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 12.7 Certification.

(a) * * *

(2) The person applying for the benefits must certify in writing on Form AD–1026 that such person will not produce an agricultural commodity on highly erodible land, or designate such land as conservation use; or plant an agricultural commodity on a converted wetland; or convert a wetland in order to make possible the production of an agricultural commodity during the crop year in which the person is seeking such benefits, unless such actions are exempt, under § 12.5, from the provisions of § 12.4 of this part;

(3) The person applying for a FmHA insured or guaranteed farm loan must certify that such person shall not use the proceeds of the loan for a purpose that will contribute to excessive erosion on highly erodible land or to conversion of wetlands for the purpose, or to have the effect, of making the production of an agricultural commodity possible; and

* * * * *

14. Section 12.9 is amended by redesignating paragraphs (a) and (b) as (a)(1) and (a)(2) respectively, revising redesignated paragraph (a)(1), revising the reference to "paragraph (a)" in redesignated paragraph (a)(2) to read "paragraph (a)(1)", adding a heading for paragraph (a) and adding a new paragraph (b) to read as follows:

§ 12.9 Landlords and tenants.

(a) *Landlord eligiblity.* (1) Except as provided in paragraph (a)(2) of this section, the ineligibility of a tenant or sharecropper for benefits (as determined under § 12.4) shall not cause a landlord to be ineligible for USDA program benefits accruing with respect to land

other than those in which the tenant or sharecropper has an interest.

(2) * * *

(b) *Tenant or renter eligibility.* (1) The ineligibility of a tenant or renter may be limited to the program benefits listed in § 12.4(c) accruing with respect to only the farm on which the violation occurred:

(i) The tenant or renter shows that a good faith effort was made to comply by developing an approved conservation plan for the highly erodible land in a timely manner and prior to any violation of the provisions of this part; and

(ii) The owner of such farm refuses to apply such a plan and prevents the tenant or renter from implementing certain practices that are a part of the approved conservation plan; and

(iii) ASCS determines that the lack of compliance is not a part of a scheme or device as described in § 12.10.

(2) If relief is granted under paragraph (b)(1) of this section, the tenant or renter must actively apply those conservation treatment measures that are determined to be within the control of the tenant or renter.

§ 12.10 [Amended]

15. Section 12.10 is amended by removing the phrase "for the production of an agricultural commodity" at the end of the section.

16. Section 12.11 is amended by adding a sentence at the end to read as follows:

§ 12.11 Action based upon advice or action of the Department

* * * In addition, if it is determined by the appropriate USDA agency that the action of a person which would form the basis of any ineligibility under this part was taken by such person in good faith reliance on erroneous advice, information, or action of any other authorized representative of USDA, the appropriate agency may make such benefits available to the extent that similar relief would be allowed under 7 CFR part 790.

§ 12.22 [Amended]

17. Section 12.22 is amended by revising the reference to "§ 12.5(c)" in paragraph (c) to read "§ 12.5(a)(2)."

18. Section 12.23 is amended by removing the references to "§ 12.5(b)" in the first sentences of paragraphs (a) and (d), and adding in their place "§ 12.5(a)", redesignating paragraphs (b) through (e) as paragraphs (d) through (g), respectively, and by adding new paragraphs (b) and (c) to read as follows:

§ 12.23 Conservation plans and conservation systems.

(a) * * *

(b) Any person who owns or operates highly erodible land that was under a Conservation Reserve Program contract as authorized by section 1231 of the Food Security Act of 1985, as amended, shall have 2 years after the expiration or termination of the contract to fully apply a conservation system if the conservation plan for such land requires the installation of structural measures for the production of an agricultural commodity. SCS officials may extend this period one additional year for circumstances beyond the control of the person.

(c) SCS, in providing assistance to a person for the preparation or revision of a conservation plan under this part, will provide such person with information concerning cost effective and applicable erosion control alternatives, crop flexibility, base adjustment or other conservation assistance options that may be available.

* * * * *

19. Section 12.30 is amended by redesignating paragraphs (a) through (e) as paragraphs (a)(1) through (a)(5), redesignating the introductory text of the section as the introductory text of paragraph (a), by removing the reference to "§ 12.5 (d)(1) and (d)(2)" in redesignated paragraph (a)(3) and adding in its place "§ 12.5(b)", and by adding new paragraphs (b), (c), and (d) to read as follows:

§ 12.30 SCS responsibilities regarding wetlands.

* * * * *

(b) Technical determinations regarding the restoration of converted wetlands and the development of restoration plans under this part will be made through the agreement of the local representative of SCS and a representative of the U.S. Fish and Wildlife Service. If agreement cannot be reached at the local level, such determinations will be referred to the SCS state conservationist who will, in making such determinations, consult with the U.S. Fish and Wildlife Service. All determinations made by SCS state conservationists under this paragraph will be reported by the state conservationists and the representatives of the U.S. Fish and Wildlife Service to their respective national offices.

(c) SCS determinations of wetland status and any applicable exemptions granted under this part shall be delineated on a map of the farm or tract. Notification of the wetland determination, a copy of the wetland delineation and the SCS appeal procedures shall be provided to each person who completes a Form AD–1026. The wetland determination and wetland delineation shall be certified as final by the SCS official 45 days after providing the person notice or, if appeal is filed with SCS, after a final appeal decision is made by SCS.

(d) An on-site investigation of a wetland or converted wetland site will be made by SCS before any benefits are withheld and the person shall be provided an opportunity to appeal the on-site determination to SCS if the on site determination differs from the original determination, or the person was not provided an opportunity to appeal the original determination. Such action by SCS shall be considered a review of prior determinations and official certification of the delineation. A copy of the certified final determination and the wetland delineation shall be provided to ASCS, who will record the information on the official USDA farm map and on a public list. Wetland determinations made prior to November 28, 1990 shall be considered to be final and certified if they meet the criteria of § 12.31.

20. Section 12.31 is amended by revising the reference to "§ 12.2(a)(28)" in paragraph (b)(2) to read "§ 12.2(a)(29)", revising the reference to "§ 12.5(d)(1) (ii) and (iii)" in paragraphs (c)(1) and (c)(2) to read "§ 12.5(b)(1)(iv) (A) and (B)", revising the reference to "§ 12.5(d)(1)(v)" and "12.5(d)" in paragraph (d) to read "§ 12.5(b)(1)(iii)" and "§ 12.5(b)" respectively, and adding a sentence at the end of paragraph (d) to read as follows:

§ 12.31 Wetland identification criteria.

* * * * *

(d) * * * In situations where the wetland values and functions are replaced by the restoration of a converted wetland that was converted prior to December 23, 1985, or other mitigation in accordance with a restoration or mitigation plan and schedule approved by SCS in agreement with the U.S. Fish and Wildlife Service, as described in § 12.30(b), the exemption provided by the determination will be effective after approval of the plan and as set forth in the plan.

21. Section 12.33 is amended by revising the reference to "§ 12.5(d)(1)(v)" in paragraph (a) to read "§ 12.5(b)(1)(iii)", and adding a sentence at the end of paragraph (b) to read as follows:

§ 12.33 Use of wetland and converted wetland.

* * * * *

(b) * * * Furthermore, the maintenance of any alteration or manipulation that affects the reach or flow of water made to a wetland that was cropped before December 23, 1985, would not cause a person to be determined to be ineligible under this part, provided that the maintenance does not exceed the scope and effect of the original alteration or manipulation, as determined by SCS, and provided that the area is not abandoned.

22. A new § 12.34 is added to read as follows:

§ 12.34 Paperwork Reduction Act assigned number.

The information collection requirements contained in this regulation (7 CFR part 12) have been approved by the Office of Management and Budget under provisions of 44 U.S.C. chaper 35 and have been assigned OMB Number 0560–0004.

Signed this 15th day of April 1991 in Washington, DC.

Edward Madigan,

Secretary of Agriculture.

[FR Doc. 91–9146 Filed 4–17–91; 4:47 pm]

BILLING CODE 3410–05–M

federal register

Tuesday
April 23, 1991

Part IV

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report one proposed rescission, totaling $2,400,000.

The proposed rescission affects the Department of Health and Human Services. The details of the proposed rescission are contained in the attached report.

George Bush,

The White House, April 16, 1991.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

RESCISSION NO.	ITEM	BUDGET AUTHORITY
	Department of Health and Human Services:	
	Family Support Administration:	
R91-27	Interim assistance to States for legalization.....	2,400
	Total rescissions.....	2,400

SUMMARY OF SPECIAL MESSAGES
FISCAL YEAR 1991
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
Fourth special message:		
New items.....	2,400	---
Revisions to previous special messages.....	---	---
Effects of the fourth special message.....	2,400	---
Amounts from previous special messages....	4,309,851	9,342,646
TOTAL amount proposed to date in all special messages.....	4,312,251	9,342,646

R91-27

Department of Health and Human Services

Family Support Administration

Interim assistance to States for legalization

The first paragraph under this heading in Public Law 101-517 is amended by deleting "$566,854,000" and inserting in its place "$569,254,000."

Rescission Proposal No. R91-27

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... $ 273,146,000 (P.L. 99-603, 101-517) Other budgetary resources... _____ Total budgetary resources... 273,146,000
BUREAU: Family Support Administration	
Appropriation title and symbol: Interim assistance to States for legalization 7511508	Amount proposed for rescission.....$ 2,400,000
OMB identification code: 75-1508-0-1-506	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multi-year _____ (expiration date) ☐ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

JUSTIFICATION: Transitional grants are provided to States to assist in providing financial, medical, and educational assistance to newly legalized aliens. Federal administrative expenses are included in this appropriation. States have large balances they can draw down in lieu of new budget authority. Section 204(a)(1)(C) of the Immigration Reform and Control Act of 1986 will automatically increase advance appropriations for FY 1992 by an amount equal to the rescission. As a result, States will receive the funds before using all their balances.

Enactment of this rescission would eliminate the need for a sequester of approximately .0013 percent of all sequestrable domestic discretionary resources in FY 1991. A sequester action is potentially necessary due to the fact that H.R. 1281, the "Dire Emergency Supplemental Appropriations Act, 1991," exceeds the statutory domestic discretionary cap by $2.4 million.

ESTIMATED PROGRAM EFFECT: None.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
545,765	545,765	---	---	---	---	---	---

federal register

Tuesday
April 23, 1991

Part V

Office of Personnel Management

5 CFR Parts 731, 732, 736, and 754
Suitability, Personnel Security and Related Programs, Investigations, and Suitability Disqualification Actions; Interim Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 731, 732, 736, and 754

RIN 3206-AC19, 3206-AC21, 3206-AB92

Suitability, Personnel Security and Related Programs, Investigations, and Suitability Disqualification Actions

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management has revised regulations on making personnel suitability investigations and designating risk levels for public trust positions, separating national security positions, procedures, and guidelines, and readjusted some personnel investigations guidelines. These changes reflect a reassessment of existing authorities that was made in response to recent concerns about these program areas as expressed on the SF 86, Questionnaire for Sensitive Positions, and SF 85, Questionnaire for Non-Sensitive Positions, and are intended to make clearer the distinctions between the requirements for suitability and those for national security. These changes support the new SF 85P, Questionnaire for Public Trust Positions, and the revised SF 85 and SF 86, which were recently approved.

DATES: Effective date: May 23, 1991. Comments must be received on or before June 24, 1991.

ADDRESSES: Send written comments to Frances A. Sclafani, Associate Director for Investigations, Office of Personnel Management, Post Office Box 886, Washington, DC, 20044, or deliver to OPM, room 5478, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter Garcia, Assistant Director, Office of Federal Investigations, (202) 376-3800.

SUPPLEMENTARY INFORMATION: Pursuant to section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of the heightened concerns about Government suitability and security programs and related investigative requirements and procedures. The urgency of the need to address the concerns expressed in the courts, the Congress, and by various public and private individuals and organizations, which has contributed to an intensive reassessment of OPM policies and procedures, now prompts OPM to expedite issuing these regulations to provide the foundation for program and guidance changes that respond to the concerns and implement the results of the OPM reassessment. OPM will consider comments received in response to this notice and make whatever adjustments are indicated based on a review of the comments received.

OPM has changed its regulations on suitability, at 5 CFR part 731, on related ineligibility actions, at 5 CFR part 754 (which are incorporated into revised part 731), and on matters relating to national security positions, at 5 CFR part 732, and on personnel investigations, at 5 CFR part 736. 5 CFR parts 731, 732, and 736 have been adjusted, and a reader of these parts should be aware that in addition to the main changes, words and clauses have been changed where necessary to update, or make consistent, text that was otherwise not changed.

In 5 CFR part 731, subpart A is used to address the scope of this part. It addresses the purpose of this part to reflect a reassessment of suitability program authorities, addresses implementation of regulatory and program changes, and includes delegations to agencies. Subpart B is retitled Suitability Determination to reflect the broader responsibility for suitability in the Government. 5 CFR 731.202, dealing with criteria, is changed in significant parts to focus on job-relatedness of specific factors, and to otherwise narrow the scope of certain of the criteria. Subpart C is revised to address risk designation and investigative requirements and is made the basis for procedures that OPM will implement to address concerns of Congress, Federal employee unions, and others, via a new investigations questionnaire, Questionnaire for Public Trust Positions, SF 85P. Clarifying language has been added in other sections of subpart C. Subpart D incorporates the text of current 5 CFR part 754 amended to insert OPM in place of entities that are otherwise identified. Subpart E establishes an OPM Suitability Review Panel (the Panel) to review suitability determinations made under this part, requirements for operation of the Panel, and the scope of its review. Current subpart D is incorporated into subpart E as § 731.407, Appeal to Merit Systems Protection Board. The current subpart E becomes subpart F, Reemployment Eligibility, and subpart G, Savings Provision, is added to address cases in progress at the time these interim final regulations appear.

In 5 CFR part 732, retitled National Security Positions, subparts A, B, and C are used to provide a context to the scope of changes in this part and to establish requirements in regulation that are consistent with the recent reassessment of authorities relevant to this part. This includes adding procedures in existence on position sensitivity level designation requirements, related investigative requirements and waivers and exceptions thereto, and periodic reinvestigation requirements.

In 5 CFR part 736, two subparts, A and B, are established, current § 736.102 is incorporated into subpart A substantially unchanged, and each subpart contains adjustments and more economical expression of current content. Subpart A continues to address scope and covers purpose and definitions, provides for notice to investigative sources, and provides requirements on available to the public. Subpart B addresses Investigative Requirements, and speaks specifically to OPM and agency responsibilities. 5 CFR part 754 has been incorporated into revised 5 CFR part 731.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they relate to internal personnel matters within the Federal Government.

List of Subjects in 5 CFR Parts 731, 732, 736, and 754

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM amends 5 CFR parts 731, 732, 736, and 754 as follows:

PART 731—SUITABILITY

1. Part 731 is revised to read as follows:

Subpart A—Scope

Sec.

Subpart B—Suitability Determinations

Subpart C—Suitability Rating Actions

Authority: 5 U.S.C. 1302, 3301, 3302, 7301, 7701; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306.; E.O. 11491, 3 CFR, 1966–1970 Comp., p. 861.

Subpart A—Scope

§ 731.101 Purpose.

The purpose of this part is to establish criteria and procedures for making determinations of suitability for employment in positions in the competitive service and for career appointments in the Senior Executive Service (hereinafter in this part, "competitive service") pursuant to 5 U.S.C. 3301 and E.O. 10577. Section 3301 of title 5, United States Code, directs consideration of "age, health, character, knowledge, and ability for the employment sought." E.O. 10577 directs OPM to examine "suitability" for competitive Federal employment. This part concerns only determinations of "suitability" based on an individual's character or conduct that may impact the efficiency of the service by jeopardizing an agency's accomplishment of its duties or responsibilities, or by interfering with or preventing effective service in the position applied for or employed in, and determinations that there is a statutory or regulatory bar to employment. Determinations made under this part are distinct from determinations of eligibility for assignment to, or retention in, sensitive national security positions made under E.O. 10450 or similar authorities.

§ 731.102 Implementation.

(a) An investigation conducted for the purpose of determining suitability under this part may not be used for any other purpose except as provided in a Privacy Act system of records notice published by the agency conducting the investigation.

(b) Policies, procedures, criteria, and guidance for the implementation of this part shall be set forth in issuances of the Federal Personnel Manual System or other appropriate instruments. Agencies exercising authority under this part by delegation from OPM shall conform to such policies, procedures, criteria, and guidance.

§ 731.103 Delegation to agencies.

(a) *Direct Hires.* The head of each agency is delegated authority for adjudicating suitability under this part for applicants filing directly with the agency outside a civil service register.

(b) OPM may in its discretion delegate to the heads of agencies authority for adjudicating suitability in other cases involving applicants and eligibles for, and appointees to, competitive service positions in the agency.

(c) Paragraphs (a) and (b) of this section notwithstanding, OPM may exercise its jurisdiction under this part in any case when deemed necessary.

(d) Any applicant, eligible, or appointee who is found unsuitable by any agency having delegated authority from OPM under this part for any reason named in § 731.202 may appeal to the Merit Systems Protection Board under the Board's regulations.

Subpart B—Suitability Determinations

§ 731.201 Standard.

Subject to subpart C of this part, OPM may deny an applicant examination, deny an eligible appointment, and direct an agency to remove an appointee or employee when OPM determines the action will promote the efficiency of the service.

§ 731.202 Criteria.

(a) *General.* In determining whether its action will promote the efficiency of the service, OPM or an agency to which OPM has delegated authority under § 731.103 of this chapter, shall make its determination on the basis of:

(1) Whether the conduct of the individual may reasonably be expected to interfere with, or prevent, efficient service in the position applied for or employed in; or

(2) Whether the conduct of the individual may reasonably be expected to interfere with, or prevent, effective accomplishment by the employing agency of its duties or responsibilities; or

(3) Whether a statutory or regulatory bar prevents the lawful employment of the individual in the position in question.

(b) *Specific factors.* When making a determination under paragraph (a) of this section, any of the following reasons may be considered a basis for finding an individual unsuitable:

(1) Misconduct or negligence in prior employment which would have a bearing on efficient service in the position in question, or would interfere with or prevent effective accomplishment by the employing agency of its duties and responsibilities;

(2) Criminal or dishonest conduct related to the duties to be assigned to the applicant or appointee, or to that person's service in the position or the service of other employees;

(3) Intentional false statement or deception or fraud in examination or appointment;

(4) Refusal to furnish testimony as required by § 5.4 of this chapter;

(5) Alcohol abuse of a nature and duration which suggests that the applicant or appointee would be prevented from performing the duties of the position in question, or would constitute a direct threat to the property or safety of others;

(6) Illegal use of narcotics, drugs, or other controlled substances, without evidence of substantial rehabilitation;

(7) Knowing and willful engagement in acts or activities designed to overthrow the U.S. Government by force;

(8) Any statutory or regulatory bar which prevents the lawful employment of the person involved in the position in question.

(c) *Additional considerations.* In making a determination under paragraphs (a) and (b) of this section, OPM and agencies shall consider the following additional factors to the extent that they deem these factors pertinent to the individual case:

(1) The kind of position for which the person is applying or in which the person is employed, including the degree of public trust or risk in the position;

(2) The nature and seriousness of the conduct;

(3) The circumstances surrounding the conduct;

(4) The recency of the conduct;

(5) The age of the person involved at the time of the conduct;

(6) Contributing societal conditions;

(7) The absence or presence of rehabilitation or efforts toward rehabilitation.

Subpart C—Suitability Rating Actions

§ 731.301 Jurisdiction.

(a) *Appointments subject to investigation.* (1) In order to establish an appointee's suitability for employment in the competitive service, every appointment to a position in the competitive service is subject to investigation by OPM, except:

(i) Promotion;

(ii) Demotion;

(iii) Reassignment;

(iv) Conversion from career-conditional to career tenure;

(v) Appointment, or conversion to an appointment, made by an agency of an employee of that agency who has been serving continuously with that agency for at least one year in one or more positions under an appointment subject to investigation; and

(vi) Transfer, provided the one-year, subject-to-investigation period applied to the previous appointment has expired.

(2) Appointments are subject to investigation to continue OPM's jurisdiction to investigate the suitability of an applicant after appointment and to authorize OPM to require removal when it finds the appointee is unsuitable for Federal employment. The subject-to-investigation condition may not be construed as requiring an employee to serve a new probationary or trial period or as extending the probationary or trial period of an employee.

(b) *Duration of condition.* The subject-to-investigation condition expires automatically at the end of one year after the effective date of appointment, except in a case involving intentional false statement or deception or fraud in examination or appointment, or refusal to furnish testimony.

§ 731.302 Risk designation and investigative requirements.

(a) *Risk designation.* Agency heads shall designate every competitive service position within the agency at either a High, Moderate, or Low risk level as determined by the position's potential for adverse impact to the efficiency of the service.

(b) *Investigative requirements.* Persons receiving an appointment made subject to investigation shall undergo a background investigation, the scope and coverage of which shall be determined by OPM in accordance with the level of risk determined by the agency.

(c) *Suitability reinvestigations.* (1) Every incumbent of a competitive service position:

(i) Designated High Risk under paragraph (a) of this section, or

(ii) That is a law enforcement or public safety position designated Moderate Risk under paragraph (a) of this section, shall be subject to a periodic reinvestigation of a scope established by OPM 5 years after placement, and at least once each succeeding 5 years.

(2) Periodic reinvestigations required by paragraph (c)(1) of this section may be adjudicated by the employing agency according to the procedures in this part, if applicable.

§ 731.303 Actions by OPM and other agencies.

(a) For a period of one year after the effective date of an appointment subject to investigation under § 731.301, OPM may instruct an agency to remove an appointee when it finds that the appointee is unsuitable for any of the reasons cited in § 731.202.

(b) Thereafter, OPM may require the removal of an employee on the basis of either intentional false statement or deception or fraud in examination or appointment; or refusal to furnish testimony; or statutory or regulatory bar.

(c) An action to remove an appointee or employee taken pursuant to an instruction by OPM is not an action under part 752, or §§ 315.804 through 315.806 of part 315, of this chapter.

(d) When OPM instructs an agency to remove an appointee or employee under this part it shall notify the agency and the appointee or employee of its decision in writing.

(e) Before OPM, or any agency having delegated authority from OPM under this part, shall take a final suitability action against an applicant, eligible, appointee, or employee under this part, the person against whom the action is proposed shall be given notice of the proposed action (including the availability for review, upon request, of the materials relied upon), an opportunity to answer, notice of the final decision on the action, and notice of rights of appeal, if any, all in accordance with this part.

§ 731.304 Debarment.

(a) When OPM finds a person unsuitable for any reason named in § 731.202, OPM, in its discretion, may deny that person examination for and appointment to a competitive position for a period of not more than 3 years from the date of determination of unsuitability.

(b) On expiration of a period of debarment, a person who has been debarred may not be appointed to any position in the competitive service until OPM has redetermined that person's suitability for appointment.

Subpart D—Suitability Actions

§ 731.401 Scope.

(a) *Coverage.* This subpart sets forth the procedures to be followed when OPM, acting under authority of this part, proposes to take or to instruct an agency to take, a final suitability ineligibility action, including removal, against an applicant or eligible for appointment in, or an appointee or employee in, the competitive service. This subpart does not apply to an action taken by an agency to which OPM has delegated authority under § 731.103.

(b) *Definition.* In this subpart, "days" means calendar days.

§ 731.402 Notice of proposed action.

(a) OPM shall notify the applicant, eligible, appointee, or employee (hereinafter, the "respondent") in writing of the proposed action and of the charges against the respondent. The notice shall state the reasons, specifically and in detail, for the proposed action. The notice shall also state that the respondent has the right to answer this notice in writing. If the respondent is an employee the notice shall further state that the employee may also make an oral answer, as specified in § 731.403(a). The notice shall further inform the respondent of the time limits for answer as well as the address to which such answer should be made.

(b) OPM shall send a copy of this notice to the agency, if any, that is involved. The notice shall be served upon the respondent by being mailed to the respondent's last known residence or duty station no less than 30 days prior to the effective date of the proposed adverse action. If the respondent is employed in the competitive service on the date the notice is served, the respondent shall be entitled to be retained in pay status during the notice period.

§ 731.403 Answer.

(a) *Respondent's answer.* A respondent may answer the charges in writing and furnish affidavits in support of the response. A respondent who is an employee may answer orally. The respondent may be represented by a representative of the respondent's choice, and such representative shall be designated in writing to OPM. To be timely, a written answer shall be made to OPM no more than 30 days after the date of the notice of proposed action. In the event that an employee requests to make an oral answer, OPM shall

determine the time and place thereof. OPM shall consider any answer that the respondent makes in reaching a decision.

(b) *Agency's answer.* In actions proposed by OPM under 5 CFR 5.3, the agency may also answer the notice of proposed action. The time limit for filing an answer is 30 days from the date of the notice. OPM shall consider any answer that the agency makes in reaching a decision.

§ 731.404 Decision.

OPM shall notify the respondent and the agency of the decision. The decision shall be in writing, be dated, and inform the respondent of the reasons for the decision. Removal of appointees or employees will be effective 30 days following the date of the decision. The respondent shall also be informed that an adverse decision can be appealed in accordance with subpart E of this part.

Subpart E—Administrative Review and Appeal

§ 731.501 OPM Review Panel.

(a) *Composition.* The OPM Review Panel (the Panel) is composed of 3 members. The Director of OPM in his/her sole discretion shall appoint the members of the Panel from among employees of OPM and shall designate one of them Chairman. The Chairman and members of the Panel shall be individuals who, by demonstrated ability, background, training, or experience in dealing with appellate matters or suitability issues are qualified to review OPM suitability determinations. This subpart does not apply to an action taken by an agency to which OPM has delegated authority under § 731.103, but agencies may establish similar procedures at their option.

(b) *Function.* The Panel's function is to review OPM determinations that an individual is unsuitable for employment in the competitive service and to affirm, reverse, or affirm as modified the OPM determination.

(c) *Decisions.* The Panel shall make the decision by majority vote.

§ 731.502 Procedures.

(a) *Time of filing.* When OPM issues a decision that an individual is unsuitable for employment, the individual may appeal the decision to the Panel within 30 days of the date of the decision.

(b) *Untimely filing.* If the 30-day time limit is not met the Panel will dismiss the appeal as untimely filed unless good cause for the untimely filing is demonstrated.

(c) *Computation of time.* In computing the number of days allowed for filing an appeal, the first day counted is that day after the date of the decision. If the date that would be the last day for filing falls on a Saturday, Sunday, or Federal holiday, the individual may file his/her appeal on the first workday after the date.

§ 731.503 Content of appeal.

(a) *Who may appeal.* Only an individual whom OPM has determined to be unsuitable for employment or his/her representative may file an appeal with the panel.

(b) *Content of appeal.* An appeal must include:

(1) The name, address, and telephone number of the appellant.

(2) A statement of the reasons why the appellant believes OPM's determination of unsuitability was incorrect together with any supporting documentation that he/she wishes the Panel to consider.

(c) *Service.* An appeal shall be served by personal delivery or by United States Mail to the Office of Personnel Management Suitability Review Panel, 1900 E Street, NW., room 800E, Washington, DC 20415, or P.O. Box 886, Washington, DC 20044. If the appeal concerns an individual employed at a Federal agency, the individual shall also serve a copy of the appeal upon the agency at which the action took place.

§ 731.504 Representation.

An individual may represent himself/herself or may designate a representative. An employing agency may disallow the choice of an individual as a representative that would result in a conflict of interest of position, that would conflict with the needs of the agency, or that would give rise to unreasonable costs to the Government. Before accepting a designation as representative, employees in the executive branch should consult 18 U.S.C. 205. An applicant may not be represented by an employee of an agency.

§ 731.505 Pay status.

When an employee or appointee whom OPM has determined to be unsuitable files an appeal the employing agency shall retain him or her in a pay status until the Panel issues its decision. If the Panel affirms OPM's decision, the employing agency shall remove the employee or appointee from the rolls within 5 days of receipt of the Panel's decision.

§ 731.506 Decision.

(a) After reviewing the record, the Panel shall prepare a written decision, affirming, reversing, or affirming as modified OPM's decision. The decision, if adverse, will inform the respondent of the right to appeal to the Merit Systems Protection Board under § 731.508 below.

(b) The Panel, in its discretion, may remand the case for additional investigation or consideration of relevant factors as it deems appropriate.

§ 731.507 Scope of review.

The Panel shall review de novo the OPM decision on the record. OPM bears the burden of proving by a preponderance of the record evidence that its decision would promote the efficiency of the service. If an issue of timeliness is raised, the individual appealing the OPM decision bears the burden of proving that his/her appeal was filed in a timely manner.

§ 731.508 Appeal to the Merit Systems Protection Board.

(a) *Appeal to the Merit Systems Protection Board.* An individual whom the Panel has decided is unsuitable for employment may appeal the Panel's decision to the Merit Systems Protection Board (the Board).

(b) *Exhaustion of remedies.* An individual may not appeal a determination of unsuitability to the Board unless he/she has perfected an appeal with the Panel and has received a decision from the Panel that he/she is unsuitable for Federal employment.

(c) *Appeal procedures.* The procedures for filing an appeal with the Board are found at part 1201 of title 5, Code of Federal Regulations.

Subpart F—Reemployment Eligibility

§ 731.601 Reemployment eligibility of certain former Federal employees.

(a) *Request for suitability determination.* When an employee has been removed by an agency on charges (other than security or loyalty) or has resigned on learning the agency planned to prefer charges, or while charges were pending, the former employee may request OPM to determine his or her suitability for further employment in the competitive service. OPM shall consider the request only if the former employee:

(1) Has completed any required probationary period;

(2) Has basic eligibility for reinstatement; and

(3) Includes a sworn statement with the request which sets forth fully and in detail the facts surrounding the removal or resignation.

(b) *Action by OPM.* (1) OPM, after appropriate consideration, including any investigation OPM deems necessary, shall inform the former employee of his or her current suitability for employment in the competitive service.

(2) If the former employee is found unsuitable and has had an opportunity to comment on the reasons for this finding, or has furnished comments to OPM, then OPM may cancel his or her reinstatement eligibility if that eligibility was obtained through fraud. In addition, OPM may prescribe a period of debarment from the competitive service not to exceed 3 years from the date of determination of unsuitability.

Subpart G—Savings Provision

§ 731.701 Savings provision.

No provision of these regulations shall be applied in such a way as to affect any administrative proceeding pending at the effective date of such provision. An administrative proceeding is deemed to be pending from the date of the "notice of proposed action" described in § 731.303 of this part.

PART 732—NATIONAL SECURITY POSITIONS

2. Part 732 is revised to read as follows:

Subpart A—Scope

Sec.
732.101 Purpose.
732.102 Definition and applicability.

Subpart B—Designation and Investigative Requirements

732.201 Sensitivity level designations and investigative requirements.
732.202 Waivers and exceptions to investigative requirements.
732.203 Periodic reinvestigation requirements.

Subpart C—Due Process and Reporting

732.301 Due process.
732.302 Reporting to OPM.

Subpart D—Security and Related Determinations

732.401 Reemployment eligibility of certain former Federal employees.

Authority: 5 U.S.C. 3301, 3302, 7312; 50 U.S.C. 403; E.O. 10450, 3 CFR, 1949–1953 Comp., p. 936.

Subpart A—Scope

§ 732.101 Purpose.

This part sets forth certain requirements and procedures which each agency shall observe for determining national security positions pursuant to Executive Order 10450—Security Requirements for Government Employment (April 27, 1953), 18 FR 2489, 3 CFR 1949–1953 Comp., p. 936, as amended.

§ 732.102 Definition and applicability.

(a) For purposes of this part, the term "national security position" includes: (1) Those positions that involve activities of the Government that are concerned with the protection of the nation from foreign aggression or espionage, including development of defense plans or policies, intelligence or counterintelligence activities, and related activities concerned with the preservation of the military strength of the United States; and (2) positions that require regular use of, or access to, classified information. Procedures and guidance provided in FPM chapter 732 and related issuances apply.

(b) The requirements of this part apply to competitive service positions, and to Senior Executive Service positions filled by career appointment, within the Executive Branch, and agencies may apply them to excepted service positions within the Executive Branch.

Subpart B—Designation and Investigative Requirements

§ 732.201 Sensitivity level designations and investigative requirements.

(a) For purposes of this part, the head of each agency shall designate, or cause to be designated, any position within the department or agency the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security as a sensitive position at one of three sensitivity levels: Special-Sensitive, Critical-Sensitive, or Noncritical-Sensitive.

(b) Investigative requirements for each sensitivity level are provided in FPM chapter 732.

§ 732.202 Waivers and exceptions to investigative requirements.

(a) *Waivers.*—(1) *General.* A waiver of the preappointment investigative requirement contained in section 3(b) of Executive Order 10450 for employment in a sensitive national security position may be made only for a limited period: (i) In case of emergency if the head of the department or agency concerned finds that such action is necessary in the national interest; and (ii) when such finding is made a part of the records of the department or agency.

(2) *Specific waiver requirements.* (i) The preappointment investigative requirement may not be waived for appointment to positions designated Special-Sensitive under this part.

(ii) For positions designated Critical-Sensitive under this part, the records of the department or agency required by § 732.202(a)(1) of this part shall show what decision was made on obtaining prewaiver checks, as follows: (A) The nature of the emergency precluded obtaining prewaiver checks; or (B) checks were initiated but not all responses were received within 5 days; or (C) checks made and favorably completed are listed.

(iii) The waiver restriction is optional for positions designated Noncritical-Sensitive under this part.

(iv) When waiver is authorized, the required investigation must be initiated within 14 days of placement of the individual in the position.

(b) *Exceptions to investigative requirements.* (1) Pursuant to section 3(a) of E.O. 10450, the following positions are exempt from the investigative requirements of E.O. 10450, providing that the employing agency conducts such checks as it deems appropriate to insure that the employment or retention of individuals in these positions is clearly consistent with the interests of the national security:

(i) Positions that are intermittent, seasonal, per diem, or temporary, not to exceed an aggregate of 180 days in either a single continuous appointment or series of appointments; or

(ii) Positions filled by aliens employed outside the United States.

(2) Other positions that OPM, in its discretion, deems appropriate may be made exempt based on a written request to OPM by the agency head in whose department or agency the positions are located.

§ 732.203 Periodic reinvestigation requirements.

The incumbent of each position designated Special-Sensitive or Critical-Sensitive under this part shall be subject to periodic reinvestigation of a scope prescribed by OPM 5 years after placement, and at least once each succeeding 5 years. The employing agency will use the results of such periodic reinvestigation to determine whether the continued employment of the individual in a sensitive position is clearly consistent with the interests of the national security.

Subpart C—Due Process and Reporting

§ 732.301 Due process.

When an agency makes an adjudicative decision under this part based on an OPM investigation, or when an agency, as a result of information in an OPM investigation, changes a tentative favorable placement or

clearance decision to an unfavorable decision, the agency must:

(a) Insure that the records used in making the decision are accurate, relevant, timely, and complete to the extent reasonably necessary to assure fairness to the individual in any determination.

(b) Comply with all applicable administrative due process requirements, as provided by law, rule, or regulation.

(c) At a minimum, provide the individual concerned:

(1) Notice of the specific reason(s) for the decision; and

(2) An opportunity to respond; and

(3) Notice of appeal rights, if any.

(d) Consider all available information in reaching its final decision.

(e) Keep any record of the agency action required by OPM as published in the Federal Personnel Manual and related issuances.

§ 732.302 Reporting to OPM.

(a) In accordance with section 9(a) of E.O. 10450, each agency conducting an investigation under E.O. 10450 is required to notify OPM when the investigation is initiated.

(b) In accordance with section 14(c) of E.O. 10450, agencies shall report to OPM the action taken with respect to individuals investigated pursuant to E.O. 10450 as soon as possible and in no event later than 90 days after receipt of the final report of investigation.

Subpart D—Security and Related Determinations

§ 732.401 Reemployment eligibility of certain former Federal employees.

(a) *Request.* A former employee who was terminated, or who resigned while charges were pending, from a department or agency of the Government under a statute or executive order authorizing termination in the interest of national security or on grounds relating to loyalty, and authorizing OPM to determine the eligibility for employment in another department or agency of the Government, may request OPM in writing to determine whether the individual is eligible for employment in another department or agency of the Government.

(b) *Action by OPM.* (1) OPM shall determine, and will notify the former employee, after appropriate consideration of the case, including such investigation as it considers necessary, whether the individual may be employed in another department or agency of the Government.

(2) If a former Federal employee found ineligible under this section has had an opportunity to comment on the reasons for the action, or has furnished them to OPM or to the former employing agency, OPM may cancel the reinstatement eligibility if the eligibility resulted from the last Federal employment and was obtained through fraud, and OPM may prescribe a period of debarment not to exceed 3 years.

PART 736—PERSONNEL INVESTIGATIONS

3. Part 736 is revised to read as follows:

Subpart A—Scope

Sec.

Subpart B—Investigative Requirements

Authority: Pub. L. 93–579; (5 U.S.C. 552a).

Subpart A—Scope

§ 736.101 Purpose and definitions.

(a) *Purpose.* The purpose of this part is to specify certain requirements for personnel investigations conducted by OPM, and for those conducted under delegated authority from OPM. The requirements of this part apply to suitability and national security investigations conducted under parts 731 and 732 of this chapter; they also apply to investigations to determine eligibility or qualifications not covered in parts 731 and 732 of this chapter. The requirements of this part apply to employees in the civil service of the Executive Branch and to persons performing contract, voluntary or indirect services for the Federal Government, as set forth in subsection (b) below.

(b) *Definitions.* For the purposes of this part, (1) *Federal employment* includes the following range of services performed for the Federal government: (i) All employment in the competitive or excepted service or the Senior Executive Service in the Executive Branch; (ii) appointments, salaried or unsalaried, to Federal Advisory Committees or to membership agencies; (iii) cooperative work assignments in which the individual has access to Federal materials such as examination booklets, or performs service for, or under supervision of, a Federal agency while being paid by another organization such as a State or local government; (iv) volunteer arrangements in which the individual performs service for, or under the supervision of, a Federal agency; and (v) volunteer or other arrangements in which the individual represents the United States Government or any agency thereof.

(2) *Agency* means any authority of the Government of the United States, whether or not it is within or subject to review by another agency, and includes any executive department, military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government, or any independent regulatory agency.

(3) *Personnel investigation* means an investigation conducted by written or telephone inquiries or through personal contacts to determine the suitability, eligibility, or qualifications of individuals for Federal employment, for work on Federal contracts, or for access to classified information or restricted areas.

§ 736.102 Notice to investigative sources.

(a) The agency investigator will notify the source from whom information is requested, whether in person or by telephone, of the purpose for which the information is being sought and of the uses that may be made of the information. The interviewing agent must notify each person interviewed and each custodian of records contacted that all information provided, including the record source's identity, may be disclosed upon the request of the subject of the investigation.

(b) The interviewing agent may grant a pledge to keep confidential the identity of an information source upon specific request by the source. In addition, the agent has discretion to offer the source a pledge of confidentiality where the agent believes that such a pledge is necessary to obtain information pertinent to the investigation. A pledge of confidentiality may not be assumed by the source. The interviewing agent may not suggest to a source that the source request confidentiality.

(c) Where information is requested by written inquiry, the form, instructions, or correspondence used by an agency will include: (1) Notification that all information furnished by the source, including the source's identity, except for custodians of law enforcement or educational records, may be disclosed upon the request of the subject of the investigation; and (2) Space for the information source to request a pledge that the source's identity will not be disclosed to the subject of the investigation; or (3) An offer to make

special arrangements to obtain significant information which the source feels unable to furnish without a promise that the source's identity will be kept confidential.

(d) A pledge of confidentiality, if granted, extends only to the identity of the source, and to any information furnished by the source that would reveal the identity of the source.

§ 736.103 Protecting the identity of a source.

When a source is granted a promise that the source's identity will be kept confidential, the investigative agency and all other agencies that receive information obtained under the promise are required to take all reasonable precautions to protect the source's identity. Each agency will prepare for its investigators and agents implementing instructions consistent with this part.

§ 736.104 Public availability of investigative files.

(a) Investigative files are records subject to the Privacy Act and the Freedom of Information Act and are made available to requesters in accordance with the provisions of those Acts.

(b) Requests for investigative records are to be submitted to the Office of Personnel Management, Federal Investigations Processing Center, FOI/PA, Boyers, Pennsylvania 16018.

Subpart B—Investigative Requirements

§ 736.201 Responsibilities of OPM and other Federal agencies.

(a) Unless provided otherwise by law, the investigation of persons entering or employed in the competitive service, or by career appointment in the Senior Executive Service, is the responsibility of OPM.

(b) Requests for delegated investigating authority. Agencies may request delegated authority from OPM to conduct or contract out investigations of persons entering or employed in the competitive service or by career appointment in the Senior Executive Service. Such requests shall be made in writing by agency heads, or designees, and specify the reason(s) for the request.

(c) Timing of investigations. Investigations required for positions must be initiated within 14 days of placement in the position except for: Positions designated Critical-Sensitive under part 732 of this chapter must be completed preplacement, or post-placement with approval of a waiver in accordance with § 732.202(a) of this chapter; and for positions designated Special-Sensitive under part 732 of this chapter must be completed preplacement.

PART 754—[REMOVED AND RESERVED]

4. Part 754 is removed and reserved.

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Part VI

Office of Personnel Management

5 CFR Parts 9 et al.

Senior-Level and Senior Executive Service Positions; Interim Rule With Request for Comments

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 9, 213, 214, 300, 305, 317, 319, 353, 534, 536, 591, and 630

Senior-Level and Senior Executive Service Positions

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations governing pay setting and employment procedures for certain senior-level positions, as well as Senior Executive Service positions, under the Federal Employees Pay Comparability Act of 1990 (FEPCA). FEPCA abolished grades GS–16, 17, and 18 of the General Schedule; made changes affecting the pay of positions formerly at these grades, scientific and professional positions established under 5 U.S.C. 3104, and Senior Executive Service positions; and also made certain changes affecting these positions and their incumbents. The regulations are intended to assure that all rights and benefits are maintained for affected employees.

DATES: The interim regulations set forth below and the amendments made by the following sections of FEPCA are effective on the first day of the first pay period beginning on or after April 23, 1991: (1) Section 101(b)(9) (A), (B), (C), (D), (E), (G), (I), (J), and (K), relating to the abolishment of grades GS–16, 17, and 18 of the General Schedule; (2) Section 101(c)(1)(A), concerning references in other laws to the rates of pay for grades GS–16, 17, and 18; (3) Section 101(c)(2)(B), concerning agencies' authority to fix pay under 5 U.S.C. 5376; (4) Section 101(d), which authorizes OPM to prescribe regulations governing the conversion or adjustment of rates of pay, where necessary because of the abolishment of grades GS–16, 17, and 18; and (5) Section 102, which establishes a new senior-level pay system for positions classified above GS–15 and scientific or professional positions established under 5 U.S.C. 3104. Comments on the interim regulations must be received on or before June 24, 1991.

ADDRESSES: Send or deliver written comments to Assistant Director, Office of Executive and Management Policy, HRDG, room 6R48, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Neal Harwood at 202–606–1610 (FTS 266–1610).

SUPPLEMENTARY INFORMATION: The Federal Employees Pay Comparability Act of 1990 (FEPCA), Public Law 101–509 of November 5, 1990, and implementing Executive Order 12748 of February 1, 1991, make a number of changes affecting the pay and employment conditions of executive positions and personnel. Described below are the regulatory revisions that have been made to implement these changes.

Senior Executive Service (SES) Positions

FEPCA revises the definition of an SES position in 5 U.S.C. 3132(a)(2) to state that the position must be classified above GS–15 of the General Schedule (in lieu of being in GS–16, 17, or 18 of the General Schedule), or in level IV or V of the Executive Schedule. Grades GS–16, 17, and 18 are abolished under section 101(b)(1) of FEPCA. In determining whether a position is classified above GS–15 for purposes of placing a position in the SES, agencies should use the guidance in section S4–4 of FPM Supplement 920–1, Operations Handbook for the Senior Executive Service.

FEPCA also changes the lowest rate of basic pay that may be set by the President for the SES. Previously it was GS–16/1. Under revised 5 U.S.C. 5382(b), the lowest rate is 120 percent of GS–15/1. (The highest rate of basic pay that may be set by the President remains level IV of the Executive Schedule.) Since the lowest SES pay rate (ES–1) of $67,000 is currently above the new minimum rate that may be set for the SES (120 percent of GS–15/1 is $73,972), there is no need to adjust the rate of basic pay of any individual in the SES upon implementation of FEPCA.

FEPCA eliminates in section 102(b)(2) the Governmentwide ceiling in 5 U.S.C. 5108 of 10,777 on the number of SES and GS–16, 17, and 18 positions combined. However, the requirement remains in 5 U.S.C. 3133 that OPM, in consultation with OMB, allocate a total number of SES positions to each agency on a biennial basis.

FEPCA also establishes in 5 U.S.C. 5307 a limitation on aggregate compensation of level I of the Executive Schedule as of the end of the calendar year. This limitation includes basic pay, allowances (including physicians comparability allowances and retention allowances), differentials, bonuses (including recruitment and relocation bonuses), awards (including SES performance and rank awards), and other similar cash payments. We have interpreted the limitation in 5 U.S.C. 5307 as impliedly superseding the limitation on aggregate compensation that was in 5 U.S.C. 5383(b)(1) for SES employees alone because 5 U.S.C. 5307 is the broader, more general, and more recent law. Note that whereas the limitation in 5 U.S.C. 5383(b)(1) was applied on a fiscal year basis, the limitation in 5 U.S.C. 5307 will be applied on a calendar year basis. Section 534.402 of title 5, Code of Federal Regulations, is revised to state that senior executives are subject to the aggregate compensation limitations in the new 5 CFR part 530, subpart B, which implements 5 U.S.C. 5307.

Senior-Level Positions Classified above GS–15 and ST Positions

(1) Pay Provisions

FEPCA establishes a new 5 U.S.C. 5376 on pay setting for two categories of executive positions. The first category is senior-level positions classified above GS–15. These are positions formerly graded at GS–16, 17, and 18. These grade levels are abolished by section 102(b)(1) of FEPCA. Administrative law judge positions formerly at those grade levels are now paid under a separate pay system (5 U.S.C. 5372). Positions of members of agency boards of contract appeals formerly at those grade levels are also now paid under a separate pay system (5 U.S.C. 5372a). The remaining GS–16, 17, and 18 positions will be paid under 5 U.S.C. 5376. These positions are primarily positions that are in agencies excluded from the SES or are positions that do not meet the functional criteria (e.g., managerial or supervisory responsibilities) for inclusion in the SES. In determining whether a position is classified above GS–15, agencies should, as appropriate, compare proposed positions with existing positions classified above GS–15 or other comparable executive positions, extend existing classification standards, and/or use existing classification guides, such as the "Guide for Appraisal of Scientific Positions Proposed for GS–16, 17, and 18."

The second category of positions paid under 5 U.S.C. 5376 is scientific and professional (ST) positions engaged in research and development and established under 5 U.S.C. 3104. These positions were formerly paid under 5 U.S.C. 5371.

The regulations established a new subpart E of part 534 to cover pay for these two categories of positions. Subpart C of Part 534, which previously covered ST pay, is abolished.

Pay for positions subject to 5 U.S.C. 5376 may be no less then 120 percent of GS–15/1 and no more than level IV of the Executive Schedule. Agencies must adopt written procedures to show how pay for employees subject to 5 U.S.C. 5376 will be set. Pay may not be increased until agency written procedures are established, except to meet the minimum rate established by the section. There is no requirement for prior OPM approval of agency procedures, but a copy of the procedures must be available for OPM review.

In structuring their pay system for setting the pay of individual employees, agencies may use any dollar amount within the minimum and maximum amounts established by 5 U.S.C. 5376, establish a fixed number of specific rates, or establish a series of pay ranges. The method chosen by the agency must be shown in its written procedures.

The procedures must indicate what criteria will be used to assign rates of pay to individual employees. Current guidelines in subchapter 3 of FPM Chapter 534 on the setting of pay for ST positions provide that for initial appointment agencies should consider alignment with other positions and incumbents with comparable responsibilities and qualifications. The guidelines for pay adjustments after appointment include changes in position content, performance, length of service, and increased professional stature.

Agencies may continue to apply these guidelines for ST positions and may also use them for senior-level positions classified above GS–15. Agencies may also take into consideration other relevant factors, including pay for comparable private sector personnel. In setting the pay of individual senior-level and ST employees, agencies also should take into account the relationship to pay for employees in executive positions.

The procedures must provide for a reasonable distribution of individuals within the pay range provided by law (currently $73,972 to $108,300). New appointees generally should have their pay set within approximately the first third of the pay range (currently $73,972 to $85,415), depending on such factors as the individual's current rate of pay, qualifications, and position to which appointed. (For a GS–15/10 at $80,138, an increase to $85,415 would be 6.6%.) Agencies should reserve pay that would exceed level V of the Executive Schedule (currently $101,300) to highly unusual situations where the position is especially important to the agency and/or the qualifications of the individual are unusually high.

The regulations provide that pay for individual employees shall be set by the head of the agency, or his or her designee, in accordance with the agency's written procedures. Those procedures must state who has authority within the agency to set pay and what management controls will be applied to assure compliance with the procedures.

Prior approval of OPM in setting the rate of pay for individual employees is not necessary, but all pay changes must continue to be reported to the Office of Executive and Management Policy on OPM Form 1390 (Executive Personnel Transaction).

Like the SES, the regulations provide that pay for senior-level and ST employees may be adjusted only once every 12 months, starting with the initial adjustment under the 5 U.S.C. 5376 provisions. Pay setting upon conversion to the 5 U.S.C. 5376 provisions is not considered an adjustment if the employee's current pay rate is not changed or is changed to meet the minimum rate established by the section ($73,972).

(2) Abolishment of the Executive Assignment System

About three-fourths of the approximately 250 GS–16, 17, and 18 supergrade positions in the executive branch (not including administrative law judge and boards of contract appeals positions) were in the Executive Assignment System (EAS), which was established under Civil Service Rule IX. The EAS was based on the existing supergrade structure. In view of the abolishment of the GS–16, 17, and 18 grades under FEPCA, the President has revoked Rule IX by section 8 of Executive Order 12748 of February 1, 1991, and has authorized OPM to take such action as OPM may determine necessary to provide for the orderly termination of the EAS and the appropriate conversion of employees serving under the System. The Director is taking such action concurrent with the issuance of the regulations implementing the senior-level pay authority under 5 U.S.C. 5376. At the same time, 5 CFR part 305, the implementing regulation for the EAS, is also being abolished.

With the abolishment of the EAS, positions and incumbents will be subject to the normal procedures governing the competitive and excepted services, except where special procedures are provided in regulation or the Federal Personnel Manual. See section (3) below.

Instructions for converting from the EAS will be issued in the Federal Personnel Manual. It should be noted that under § 319.103(b) of the regulations, individuals in career executive assignments will convert to career or career-conditional appointments in the competitive service as appropriate; and individuals in noncareer executive assignments will convert to Schedule C appointments in the excepted service. Individuals in limited executive assignments, who currently may serve not more than 5 years, will convert to term appointments in the competitive service for a period not to exceed 5 years from the initial limited executive assignment. New term appointees, however, will be subject to the 4-year limit in § 316.301.

(3) Employment Procedures

A new part 319 is established covering employment procedures for ST positions and senior-level positions classified above GS–15 in the executive branch.

(a) *Position allocations.* Under 5 U.S.C. 3104, the total number of ST positions Governmentwide may not exceed 517; and such positions may be established only by action of the OPM Director. In view of the statutory limit on the total number of ST positions, it is necessary that OPM continue its allocation of ST positions.

Under 5 U.S.C. 5108, OPM may, for an executive agency, establish the maximum number of senior-level positions that may at any one time be classified above GS–15. OPM may also establish standards and procedures as to which positions may be classified above GS–15 (including the authority to require agencies to obtain prior approval of OPM). In keeping with the requirements for SES and ST positions, the regulations provide that OPM will also allocate senior-level positions in executive agencies. Once an agency has an OPM allocation, it may establish within the allocation a senior-level position that is properly classified above GS–15 without OPM approval. Agency senior-level position allocations at the time of conversion will be the same as their GS–16, 17, and 18 allocations immediately prior to conversion.

(b) *Qualifications standards.* The regulations provide that agencies may establish qualifications standards for ST positions and senior-level positions classified above GS–15 in accordance with criteria established by OPM.

(c) *Qualifications approval.* By law, the Director of OPM must approve the qualifications of appointees to senior-level positions classified above GS–15 (5 U.S.C. 3324) and to ST positions (5 U.S.C. 3325). In most cases, OPM in the past has delegated the approval authority to agencies by individual delegation agreements. Under OPM's authority in 5 U.S.C. 1104, the approval authority is delegated on a

Governmentwide basis to the heads of agencies in § 319.102(c). Subpart C of part 300 requiring prior OPM approval of qualifications of ST appointees is abolished.

Other Executive Positions

(1) Positions where pay is fixed by administrative action.

FEPCA amends 5 U.S.C. 5373 to provide that the limitation on pay fixed by administrative action will be level IV of the Executive Schedule. The previous limitation had been GS–18. This provision was implemented by **Federal Register** notice of February 14, 1991 (56 FR 6212).

(2) Pay fixed outside title 5 of the United States Code.

Some agencies have positions where statutes other than title 5, United States Code, currently set the pay equivalent to, or not to exceed the maximum rate for, GS–16, 17, or 18. Section 101(c) of FEPCA contains instructions on pay setting for these positions now that the GS–16, 17, and 18 grades are abolished.

Miscellaneous

A number of additional changes have been made in the regulations to take into account the abolishment of grades GS–16, 17, and 18. These include:

—Sections 213.3301(b) and 213.3302(a)—Schedule C positions. Applicability of sections is extended to all Schedule C positions instead of just Schedule C positions at GS–15 and below.

—Section 214.201—Definition of an "Equivalent position" to an SES position. Editorial change.

—Section 353.305—Restoration rights of TAPER employees. Editorial change.

—Sections 536.102, 536.105, 536.208, 536.209, and 536.305—Grade and pay retention.

(1) Upon the implementation of 5 U.S.C. 5376, employees in positions classified above GS–15 or in scientific and professional (ST) positions will not be eligible for grade retention if placed in the General Schedule since under 5 U.S.C. 5376 they are in an ungraded pay system. They would be eligible, however, for pay retention. This provision parallels the existing Part 536 regulation for employees in the SES, which is also ungraded.

(2) For employees at GS–15 or below who are subject to grade retention at GS–16 or above (e.g., a former GS–16 employee who was reduced to GS–15) at the time grades GS–16, 17, and 18 are abolished, their entitlement to grade retention under Part 536 will cease on the day before the new senior-level pay system under 5 U.S.C. 5376 takes effect. The employees, however, will be subject to the pay retention provisions of Part 536.

(3) For employees at GS–16 or GS–17 who are subject to grade or pay retention (e.g., a former GS–17 employee reduced to GS–16) at the time grades GS–16, 17, and 18 are abolished, their entitlement to grade and pay retention under part 536 will cease on the day before the new pay system takes effect. This is because under § 536.506(b), the pay of these employees under the new senior-level pay system may not be less than the rate they were receiving immediately before converting to the new system; and, therefore, there is no need for pay retention.

—Section 591.203—Cost-of-living allowances and post differentials. The section is amended to make clear that individuals in senior-level and scientific and professional positions paid under 5 U.S.C. 5376 who are employed in an area covered by a nonforeign area cost-of-living allowance (COLA) or post differential will continue to receive that benefit.

—Section 630.211—Exclusion of annual and sick leave coverage for Presidential appointees. Editorial changes. Presidential appointees in positions where the rate of basic pay is equal to or exceeds the pay for level V of the Executive Schedule (other than senior-level positions paid under 5 U.S.C. 5376) continue to be excluded from annual and sick leave coverage. Presidential appointees in other positions, including senior-level positions paid under 5 U.S.C. 5376, continue to have annual and sick leave coverage, unless excluded by the President, OPM, or an agency in accordance with § 630.211.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to section 553(b)(3)(B) of title 5 of the United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5 of the United States Code, I find that good cause exists to make this amendment effective in less than 30 days. The senior-level pay provisions of the Federal Employees Pay Comparability Act of 1990, Public Law 101–509 (November 5, 1990) must be made effective between 90 and 180 days after enactment. The notice is being waived and the regulation is being made effective in less than 30 days to give affected employees the benefits of the new pay provisions at the earliest practicable date.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will only affect Federal Government employees who are in executive positions.

List of Subjects

5 CFR parts 213, 214, 300, 305, 317, 319, 353, 536, and 630

Government employees.

5 CFR parts 534 and 591.

Government employees, wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending 5 CFR parts 9, 213, 214, 300, 305, 317, 319, 353, 534, 536, 591, and 630 as follows:

PART 9—EXECUTIVE ASSIGNMENT SYSTEM FOR POSITIONS IN GRADES GS–16, 17, AND 18 OF THE GENERAL SCHEDULE (RULE IX) [REMOVED]

1. Part 9 is removed.

PART 213—EXCEPTED SERVICE

2. The authority for part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; sec. 213.101 also issued under 5 U.S.C. 2103; sec. 213.102 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); sec. 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, 8337(h) and 8457.

3. In subpart C, the "Schedule C" center heading is republished and § 213.3301b and the introductory text of paragraph (a) in § 213.3302(a) are revised to read as follows:

Subpart C—Excepted Schedules

* * * * *

Schedule C

* * * * *

§ 213.3301b Revocation of exceptions.

(a) The exception from the competitive service for each position listed in Schedule C by OPM is revoked immediately upon the position becoming vacant.

(b) An agency shall notify the Office of Personnel Management within 3 workdays after a Schedule C position has been vacated.

§ 213.3302 Temporary Schedule C positions during a Presidential transition, as a result of changes in department or agency heads, or at the time of a creation of a new department or agency.

(a) An agency may establish temporary Schedule C positions necessary to assist a department or agency head during the period immediatly following a change in presidential administration, when a new department or agency head has entered on duty, or at the time of the creation of a new department or agency. Such positions shall be either:

* * * * *

PART 214—SENIOR EXECUTIVE SERVICE

4. The Authority for part 214 continues to read as follows:

Authority: 5 U.S.C. 3132.

5. The definition of "equivalent position" in § 214.201 is revised to read as follows:

§ 214.201 Definitions.

* * * * *

Equivalent position as used in section 3132(a)(2) of title 5, United States Code, means a position under any pay system where the level of the duties and responsibilities of the position and the rate of pay are comparable to that of a position above GS–15 or at Executive Level IV or V.

* * * * *

PART 300—EMPLOYMENT (GENERAL)

6. The authority for part 300 is revised to read as follows:

Authority: 5 U.S.C. 552, 3301, and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, and 7701; E.O. 11478, 3 CFR 1966–1970 Comp., page 803.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

§ 300.301 (Subpart C)—[Removed]

7. Subpart C (§ 300.301) is removed and reserved.

PART 305—EXECUTIVE ASSIGNMENT SYSTEM—[REMOVED]

8. Part 305 is removed.

PART 317—EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE

9. The authority for part 317 continues to read as follows:

Authority: 5 U.S.C. 3392, 3393, 3393a, 3395, 3397, 3593, and 3595.

10. The heading for part 317 is revised to read as set forth above.

11. Part 319 is added to read as follows:

PART 319—EMPLOYMENT IN SENIOR-LEVEL AND SCIENTIFIC AND PROFESSIONAL POSITIONS

Subpart A—General Provisions

Sec.
319.101 Coverage.
319.102 Procedures.
319.103 Conversion.

Subpart B—Senior-Level Positions Classified above GS–15

319.201 Position establishment.

Subpart C—Scientific and Professional Positions

319.301 Position establishment.

Authority: 5 U.S.C. 1104, 3104, 3324, 3325, 5108, and 5376.

Subpart A—General Provisions

§ 319.101 Coverage.

This part covers positions paid under 5 U.S.C. 5376 and includes—

(a) Senior-level positions classified above GS–15 pursuant to 5 U.S.C. 5108; and

(b) Scientific or professional (ST) positions established under 5 U.S.C. 3104.

§ 319.102 Procedures.

The following procedures apply to positions subject to this part:

(a) Positions must be established in accordance with standards and procedures established by OPM.

(b) Agency heads are responsible for establishing qualifications standards for the positions in accordance with criteria established by OPM in the Federal Personnel Manual.

(c) Agency heads are delegated authority to approve the qualifications of individuals appointed to the positions.

(d) Pay is subject to subpart E of part 534 of this chapter.

§ 319.103 Conversion.

(a) *Applicability.* This section applies to employees who are occupying positions subject to § 319.101 of this part and are converted to the pay system established by 5 U.S.C. 5376.

(b) *Pay.* See § 534.506 of this chapter for setting pay upon conversion to the pay system under 5 U.S.C. 5376.

(c) *Appointing authority.* (1) All individuals in ST positions remain in the competitive service under their current appointing authority.

(2) Individuals in senior-level positions classified above GS–15 remain under their current appointing authority, except that individuals who were formerly under the Executive Assignment System in 5 CFR part 305 will convert as follows:

(i) Individuals who formerly held career executive assignments will convert to career or career-conditional appointments, as appropriate, in the competitive service;

(ii) Individuals who formerly held noncareer executive assignments will convert to Schedule C appointments in the excepted service; and

(ii) Individuals who formerly held limited executive assignments will convert to term appointments in the competitive service for a period not to exceed 5 years from the initial appointment to the limited executive assignment.

(d) *Conversion instructions.* Conversion is subject to instructions issued by OPM in the Federal Personnel Manual.

Subpart B—Senior-Level Positions Classified above GS–15

§ 319.201 Position establishment.

Positions may be established only under a position allocation approved by OPM. Prior approval of OPM is not required to establish individual positions within the allocation. OPM reserves the right, however, to require the prior approval of individual positions if the agency is not in compliance with standards and procedures prescribed by OPM under § 319.102 of this part.

Subpart C—Scientific and Professional Positions

§ 319.301 Position establishment.

Positions may be established only under a position allocation approved by OPM. Prior approval of OPM is not required to establish individual positions within the allocation. OPM reserves the right, however, to require the prior approval of individual positions if the agency is not in compliance with standards and procedures prescribed by OPM under § 319.102 of this part.

PART 353—RESTORATION TO DUTY FROM MILITARY SERVICE OR COMPENSABLE INJURY

12. The authority citation for part 353 continues to read as follows:

Authority: 38 U.S.C. 2021, et seq., and 5 U.S.C. 8151.

13. In subpart C, § 353.305 is revised to read as follows:

Subpart C—Agency Obligation to Restore

§ 353.305 Restoration rights of TAPER employees.

An employee serving in the competitive service under a TAPER appointment under § 316.201 of this chapter (other than an employee serving in a position classified above GS–15) is entitled to be restored to the position he or she left, or an equivalent position in the same commuting area.

PART 534—PAY UNDER OTHER SYSTEMS

14. The authority for part 534 is revised to read as follows:

Authority: 5 U.S.C. 1104, 5307, 5351, 5352, 5353, 5376, 5383, 5384, and 5385.

§ 534.301 (Subpart C) [Removed]

15. Subpart C (§ 534.301) is removed and reserved.

16. In subpart D, § 534.402 is revised to read as follows:

Subpart D—Pay and Performance Awards Under the Senior Executive Service

§ 534.402 Aggregate compensation.

Senior executives are subject to the aggregate compensation limitations in subpart B of part 530 of this chapter.

17. Subpart E is added to read as follows:

Subpart E—Pay for Senior-Level and Scientific and Professional Positions

Sec.

Subpart E—Pay for Senior-Level and Scientific and Professional Positions

§ 534.501 Coverage.

(a) This subpart implements 5 U.S.C. 5376 and applies to—

(1) Senior-level positions classified above GS–15 pursuant to 5 U.S.C. 5108; and

(2) Scientific or professional (ST) positions established under 5 U.S.C. 3104.

(b) This subpart does not apply to—

(1) Senior Executive Service positions established under 5 U.S.C. 3132, unless the incumbent of the position declined to convert to the SES and under § 317.303 of this chapter remained at grade GS–16, 17, or 18 or under the ST pay system;

(2) Positions in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, Defense Intelligence Executive Service, or Senior Cryptologic Executive Service; or

(3) Positions where pay is fixed by administrative action and is limited to level IV of the Executive Schedule under 5 U.S.C. 5373.

§ 534.502 Pay range.

A pay rate fixed under this subpart shall be—

(a) Not less than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule; and

(b) Not greater than the rate of basic pay payable for level IV of the Executive Schedule.

§ 534.503 Pay setting.

(a) Each agency with positions subject to this subpart shall establish written procedures for setting the pay of incumbents of the positions in accordance with the provisions of law, OPM regulations, and the Federal Personnel Manual. The head of each agency, or his or her designee, shall set the rate of pay of individuals under this subpart in accordance with the agency's written procedures.

(b) The agency's written procedures shall include—

(1) A description of the structure of the pay system;

(2) The criteria that will be used to assign rates of pay to individual employees;

(3) The 12-month waiting period on pay adjustments, as provided in paragraph (c) of this section;

(4) The designation of the official or officials who will have authority to set pay; and

(5) The management controls that will be applied to assure compliance with the procedures and a reasonable distribution of pay within the pay range.

(c) Pay of an individual may not be adjusted by an agency more than once in any 12-month period. An annual adjustment in pay under § 534.504 of this subpart shall not be considered to start a new 12-month period if it does not exceed the average General Schedule adjustment.

(d) Any reduction in the basic pay of an individual is subject to the provisions of subparts C and D of Part 752 of this chapter.

§ 534.504 Annual adjustment in pay.

Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under 5 U.S.C. 5303 in the rates of pay under the General Schedule, each rate of pay established under this subchapter shall be adjusted by such amount as the head of the agency considers appropriate, in accordance with the provisions of § 534.503 of this part.

§ 534.505 Pay related matters.

(a) *Aggregate compensation.* Limits on aggregate compensation, including basic pay, are in 5 U.S.C. 5307 and part 530, subpart B, of this chapter.

(b) *Performance awards.* Performance awards may be paid under 5 U.S.C. 4505a and implementing OPM regulations.

§ 534.506 Conversion provisions.

(a) This section covers initial conversion to the pay system under 5 U.S.C. 5376 as of the effective date of these regulations.

(b) The rate of basic pay for any individual converting to a pay system under 5 U.S.C. 5376 shall be at least equal to the rate payable to that individual immediately before such conversion, including any interim geographic adjustment authorized by Schedule 9 of Executive Order 12736 of December 12, 1990.

(c) If there is an increase in an individual's rate of basic pay upon conversion, other than to the minimum rate under 5 U.S.C. 5376, the increase must be approved by the head of the agency or his or her designee.

PART 536—GRADE AND PAY RETENTION

18. The authority citation for part 536 continues to read as follows:

Authority: 5 U.S.C. 5361–5366; § 536.307 is also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

19. In subpart A, § 536.102 is amended by revising paragraph (1) of the definition of "representative rate," and § 536.105 is amended by revising paragraph (c) to read as follows:

Subpart A—Definitions, Coverage and Applicability

* * * * *

§ 536.102 Definitions.

* * * * *

Representative rate means:

(1) The fourth rate of the grade in the case of a position under the General Schedule, including the fourth rate of the corresponding grade of the General Schedule in the case of a position under the Performance Management and Recognition System established by

chapter 54 of title 5, United States Code, or the individual's rate under the Senior Executive Service or a position subject to the senior-level pay authority in 5 U.S.C. 5376;

* * * * *

§ 536.105 Exclusions.

* * * * *

(c) Grade retention under § 536.103(a)(1) or (b) shall not apply to a member of the Senior Executive Service or an individual in a position subject to the senior-level pay authority in 5 U.S.C. 5376 who is placed in a position in a covered pay schedule.

20. In subpart B, § 536.208 is amended by adding a new paragraph (d), and § 536.209(b)(1) is revised to read as follows:

Subpart B—Determination of Retained Grade and Rate of Basic Pay; Loss of, or Termination of Eligibility

* * * * *

§ 536.208 Termination of grade retention.

* * * * *

(d) Grade retention terminates on the day before the first day of the first pay period beginning on or after April 23, 1991 in the case of an employee who, on that date, becomes subject to the senior-level pay system established under 5 U.S.C. 5376 and subpart E of part 534 of this chapter.

§ 536.209 Loss of eligibility for, or termination of, pay retention.

* * * * *

(b) * * *

(1) The day before placement or conversion if the termination is the result of the employee's placement in another position or conversion to the senior-level pay system established under 5 U.S.C. 5376 and subpart E of part 534 of this chapter.

21. In subpart C, § 536.305 is removed and reserved.

PART 591—ALLOWANCES AND DIFFERENTIALS

22. The authority citation for part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10,000; 3 CFR 1943–1948 Comp. p. 792; E.O. 12,510; 3 CFR 1985 Comp. p. 338.

23. In Subpart B, § 591.203 is amended by revising paragraph (a)(1) and adding new paragraphs (a) (5) and (6) to read as follows:

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

* * * * *

§ 591.203 Agencies and employees covered.

(a) * * *

(1) General Schedule (including the Performance Management and Recognition System and employees in positions authorized by 5 CFR 213.3102(w) whose rates of basic pay are established under the General Schedule).

* * * * *

(5) Senior Executive Service.

(6) Senior-level and scientific and professional positions paid under 5 U.S.C. 5376.

* * * * *

PART 630—ABSENCE AND LEAVE

24. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.303 also issued under 5 U.S.C. 6133(a); § 630.501 and Subpart F also issued under E.O. 11228; Subpart G also issued under 5 U.S.C. 6305; Subpart H issued under 5 U.S.C. 6326; Subpart I also issued under 5 U.S.C. 6332 and Pub. L. 100–566; Subpart J also issued under 5 U.S.C. 6362 and Pub. L. 100–566; Subpart J also issued under 5 U.S.C. 6362 and Pub. L. 100–566.

25. In subpart B, paragraph (a) of § 630.211 is revised, the heading for paragraph (b) is republished, and paragraph (b)(2) is revised to read as follows:

Subpart B—Definitions and General Provisions for Annual and Sick Leave

* * * * *

§ 630.211 Exclusion of Presidential appointees.

(a) *Authority.* (1) Section 6301(2)(xi) of title 5, United States Code, authorizes the President to exclude certain Presidential appointees in the executive branch or the government of the District of Columbia from the annual and sick leave provisions of subchapter I of chapter 63 of title 5, United States Code, and from the related provisions of this part.

(2) The President, by Executive Order 10540, as amended, has delegated to the Office of Personnel Management the responsibility for making exclusions under section 6301(2)(xi), and the Office of Personnel Management has delegated responsibility to the head of each agency consistent with the provisions of this section.

(3) Presidential appointees in positions where the rate of basic pay is equal to or exceeds the rate for level V of the Executive Schedule are already excluded from the annual and sick leave provisions by 5 U.S.C. 6301(2)(x). Therefore, no further action by an agency is necessary to exclude these appointees.

(b) *Criteria for exclusions.* * * *

(2) The officer is not a United States attorney or United States marshal; and

* * * * *

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federal register

Tuesday
April 23, 1991

Part VII

The President

Proclamation 6274—Earth Day, 1991

Part VII

The President

Federal Register
Vol. 56, No. 78
Tuesday, April 23, 1991

Presidential Documents

Title 3—

The President

Proclamation 6274 of April 22, 1991

Earth Day, 1991

By the President of the United States of America

A Proclamation

During the two decades that have passed since our Nation first observed Earth Day, we have made great strides in restoring and protecting our environment. Through our firm commitment and our substantial investment, we have improved significantly the quality of our air, land, and water resources. The United States leads the world in environmental protection, and we intend to keep it that way.

Our accomplishments during the past year are a special source of pride. During 1990 the United States was instrumental in strengthening the Montreal Protocol on Substances That Deplete the Ozone Layer. A total phaseout of chlorofluorocarbons, or CFCs, was adopted in July as part of a package of amendments to the Protocol. The United States also signed the Basel Convention, which requires that transboundary shipments of hazardous wastes be conducted in an environmentally sound manner. We expanded the world's leading global climate change research program, and we took several domestic policy actions, including an ambitious reforestation initiative, that will reduce harmful emissions that can contribute to the "greenhouse effect." In November, I signed into law important amendments to the Clean Air Act—amendments based, in large part, on a proposal that I submitted to the Congress in July 1989. That proposal helped to break a 13-year legislative logjam. The new Clean Air Act will reduce risks of cancer, respiratory disease, and other health problems; it will limit damage to crops, forests, parks, lakes, and streams; and it will help to reduce smog in our Nation's cities.

On Earth Day 1990 and, indeed, throughout the year, millions of Americans participated in activities that underscore how individuals can make a difference in cleaning up and protecting the environment. Today countless Americans are changing their daily habits to reflect a renewed sense of environmental stewardship, and many businesses are working to apply new, environmentally conscious methods of operation. As we celebrate Earth Day 1991, we affirm, once again, the importance of public education and individual action to further progress in environmental protection. This is a good opportunity to remind ourselves and our neighbors of both our responsibilities toward the environment and the rewards of meeting them.

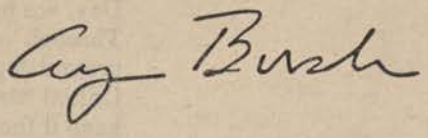
Every American can make a difference at the grassroots level. For example, we can recycle bottles, paper, and used motor oil, and we can help to conserve energy by driving less and by adjusting the thermostats in our homes and offices.

Observed in the glorious new light of spring, Earth Day should inspire us to treat this magnificent yet fragile planet with commensurate care and attention. Recognizing our obligation toward future inhabitants of this earthly home, and knowing that global problems have local solutions, let us make a renewed personal commitment to protecting the environment and to using our resources wisely.

To increase public awareness of the need for active participation in environmental protection, the Congress, by Senate Joint Resolution 119, has designated April 22, 1991, as "Earth Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim April 22, 1991, as Earth Day. I call upon the people of the United States to observe this day with appropriate programs, ceremonies, and activities designed to promote greater understanding of ecological issues. I also ask all Americans to set an example of environmental stewardship in their daily activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of April, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.



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in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-275-3030).

H.J. Res. 222/Pub. L. 102-29

To provide for a settlement of the railroad labor-management disputes between certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference and certain of their employees. (Apr. 18, 1991; 105 Stat. 169; 3 pages) Price: $1.00

H.J. Res. 134/Pub. L. 102-30

To designate the weeks of April 14 through 21, 1991, and May 3 through 10, 1992, as "Jewish Heritage Week". (Apr. 18, 1991; 105 Stat. 172; 1 page) Price: $1.00

H.J. Res. 197/Pub. L. 102-31

To designate the week of April 15 through 21, 1991, as "National Education First Week". (Apr. 18, 1991; 105 Stat. 173; 2 pages) Price: $1.00